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ABSTRACT

This study responds to the lack of research on Indian Child Welfare Act of 1978 (ICWA) compliance by examining a nationwide sample of the ICWA section within state Title IV-B Child and Family Services Plans (CFSP) and Annual Progress and Services Reports (APSR). These plans and reports address the administration of state child welfare systems. The research team also conducted surveys and telephone interviews with 10 Administration for Children and Families (ACF) central and regional administrators and 9 state representatives. Among the findings are that ACF program instructions for both the CFSP and the APSR lacked detail and clarity as to what should be included in them. A majority of states reported consulting with tribes in the development of the CFSPs/APSRs, although no information was solicited regarding the context or the effectiveness of the consultation process. Over half of all state CFSPs and APSRs did not reference any of the three specific measures outlined in ACF's guidelines: identification of Indian children, notification to the relevant tribe, and preference for Indian caregivers when determining placements for Indian children. With the exception of partnership agreements, a majority of states did not heed ACF's "suggested measures" when creating their APSRs. A large majority of the states indicated they had in place or would develop specific policies, procedures, and protocol for ICWA compliance, but regarding the required specific measures, states either did not have or were not detailing these important components. Nearly all ACF regional administrators indicated that they had reviewed their respective states' CFSP/APSR and had given them a satisfactory/good rating. Implications of these findings for tribal, state, and federal administrators are discussed, and recommendations are offered. Seven appendices present survey instruments, program instructions, and acronyms. (Contains 31 references) (TD)

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Title IV-B Child and Family Services Plans: An Evaluation of Specific Measures Taken by States to Comply with the Indian Child Welfare Act

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NICA was formed in 1999 between Casey Family Programs and NICWA. The goal of NICA is to increase permanency options for American Indian/Alaska Native children through three targeted project areas: 1) the conduct of research that can contribute to policy development on issues that impact American Indian/Alaska Native children; 2) the provision of on-site technical assistance and training to tribes to enhance service options for their children and families; and 3) the development of tribal adoption codes that incorporate historically and culturally defined practices and the implementation of a campaign to develop additional foster, kinship, or adoptive homes. Together, these three components will provide American Indian/Alaska Native children with a stronger foundation for achieving the permanency that all children deserve.

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ABSTRACT

Title IV-B Child and Family Services Plans: An Evaluation of Specific Measures Taken by States to Comply with the Indian Child Welfare Act

Although the Indian Child Welfare Act of 1978 (ICWA) has been lauded as one of the most significant pieces of federal legislation affecting American Indian families, little research has been conducted to determine its effectiveness in practice. The current study responds to the lack of knowledge-based research conducted on ICWA compliance by examining a nationwide sample of the ICWA section within state Title IV-B Child and Family Services Plans (CFSP) and Annual Progress and Services Reports (APSR). The research team also conducted IV-B surveys and telephone interviews with Administration for Children and Families (ACF) central and regional administrators to gather more in-depth information on the CFSP/APSR process.

Major findings include the following: 1) ACF program instructions for both the CFSP and the APSR lacked detail and clarity as to what should be included; 2) A majority of states reported consulting with tribes in the development of the CFSPs/APSRs, although no information was solicited regarding the context of consultation or the effectiveness of the consultation process; 3) Over half of all state CFSPs and APSRs did not reference any of the three specific measures outlined in ACF's guidelines; 4) With the exception of partnership agreements, a majority of states did not heed ACF's "suggested measures" when creating their APSRs; 5) A large majority of the states indicated they had in place or will develop specific policies, procedures, and protocol for ICWA compliance, but regarding the required specific measures, states either do not have or are not detailing these important components; and 6) Nearly all ACF regional administrators indicated that they had reviewed their respective states' CFSP/APSR and gave them a satisfactory/good rating. Implications of these findings for tribal, state, and federal administrators are discussed, and four recommendations are offered for developing measurable outcomes both to evaluate ICWA compliance and to improve federal and state monitoring processes.

Title IV-B Child and Family Services Plans: An Evaluation of Specific Measures Taken by States to Comply with the Indian Child Welfare Act

1. Title IV-B, Subpart 1 of the Social Security Act authorizes an annual appropriation to provide state public welfare agencies and Indian tribes with financial support to expand their child welfare services.

- The legislation provides for a federally funded formula grant program for states and tribes to use IV-B funds in the following areas: pre-placement preventive services to strengthen families and avoid placement of children, services to prevent abuse and neglect, and services related to the provision of foster care and adoption.

2. Title IV-B requires states to submit CFSPs that detail how they intend to allocate Title IV-B, Subpart 1 funding.

- States are required to update their CFSPs yearly by submitting an APSR that contains information regarding progress made on the plan's goals and objectives.

- ACF is required to conduct Child and Family Services Reviews (CFSR) of states receiving Title IV-B funding to assure that states meet federal planning and reporting requirements.

3. The 1994 Social Security Act amendments to Title IV-B require states to include the development of specific measures for compliance with ICWA within their CFSPs.

- CFSPs must contain a description, developed after consultation with tribes/tribal organizations, of the specific measures taken by the state to comply with ICWA.

- ACF's 1999 program instructions require states to report on the following three specific measures: 1) the identification of Indian children; 2) notification of such to the relevant tribe; and 3) giving preference to Indian caregivers when determining out-of-home or permanent placements for Indian children with preference based on Indian caregivers meeting all relevant child protection standards.

4. A nationwide content analysis of the specific measures for ICWA compliance within the 1999 CFSPs and 2000 APSRs yielded the following:

- ACF program instructions for both the CFSP and APSR lacked detail and clarity as to what should be included in the ICWA sections of state plans and progress reports.

- A majority of states (75%) reported consulting with tribes, tribal organizations, urban Indian organizations, or national Indian organizations in the development of the CFSPs/APSRs, although no information was solicited regarding the context of consultation or the effectiveness of the consultation process. Analysis also revealed that of a majority of the 11 CFSPs that made no mention of consultation,

eight (72.7%) were states with no federally recognized tribes.

- A majority of states (79.5% of CFSPs and 75% of APSRs) did not respond to ACF's three required specific measures. Over half of all state CFSPs and APSRs did not reference any of ACF's required specific measures. However, a large majority of the states (72.7%) indicated they had in place or would develop specific policies, procedures, and protocol for ICWA compliance.

5. IV-B survey and telephone interviews with ACF regional and central administrators yielded the following:

- All but one regional administrator indicated that they had reviewed their respective states' CFSPs/APSRs, while only 60% said they provided feedback and/or suggestions to states regarding their plans. All regional and central administrators said that CFSPs/APSRs would be used to assist states in complying with ICWA.

- ACF regional administrators rated the overall quality of the ICWA sections of CFSPs/APSRs between "Satisfactory" (meets minimum requirements) and "Good" (slightly above minimum requirements). Due to the fact that nearly all states did not follow ACF's guidelines in reporting on the minimal required specific measures, it appeared troubling that ACF administrators rated these plans as having met required standards.

6. Four recommendations are proposed for evaluating ICWA compliance:

- ACF should work with tribes to improve program instructions and internal administrative procedures regarding state ICWA compliance. ACF program instructions should be revised to allow for better measurement of state ICWA compliance. ACF administrators should also ensure that every plan is read and evaluated.

- States should focus more effort on meeting ACF requirements, collaborating within and between states and tribes on "best practices," and performing internal ICWA compliance studies. Results showed that states either do not have the required specific measures in place or are not reporting them in their plans.

- Tribes should familarize themselves with IV-B requirements and insist on participating with states in collaboration and effective consultation specifically associated with ICWA and IV-B.

- Legislative reform should be enacted to require mandatory field examinations by ACF and to include a sanctioning process for states not meeting ICWA reporting requirements.

Introduction

On November 8, 1978, Congress enacted the Indian Child Welfare Act (ICWA) in response to the "rising concern ... over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement" (Mississippi Band of Choctaw Indians v. Holyfield, 1989). ICWA was designed to reduce the flow of Indian children away from their natural families by creating legal protections that recognize tribal interests in the welfare of their children. By allowing tribes greater involvement in child custody proceedings involving American Indian children, ICWA gives tribes a means to protect the most basic necessity they need to ensure their survival—a next generation.

Although ICWA has been lauded as one of the most significant pieces of federal legislation affecting American Indian families (Plantz, Hubbell, Barrett, & Dobec, 1989), little research has been conducted to determine its effectiveness in practice. The major purpose of the current study is to bridge that gap in research by building upon a prior study, titled Indian Child Welfare Act: A Pilot Study of Compliance in North Dakota that examined the implementation procedures of the state of North Dakota regarding ICWA (Jones, Gillette, Painte, & Paulson, 2000). The current study is Part I of a two-year project that begins by examining the ICWA sections of every submitted state Social Security Act, Title IV-B, 1999 Child and Family Services Plan (CFSP) and 2000 Annual Progress and Services Report (APSR). During Part I, the research team developed model case record review instruments to be used in Part II of the study. The model case record review instruments will be based in part on those developed by Jones et al. (2000). In 2002, Part II of the study will examine the ICWA compliance procedures of the state of Arizona using these instruments. The ensuing section contains a literature review detailing the following areas: 1) child welfare in Indian Country and the need for ICWA, 2) Title IV-B, Subpart 1 of the Social Security Act, 3) Title IV-B and Child and Family Services Reviews (CFSR), 4) the relationship between ICWA and Title IV-B of the Social Security Act, and 5) Administration for Children and Families (ACF) program instructions on ICWA reporting within Title IV-B.

Child Welfare in Indian Country and the Need for the Indian Child Welfare Act

Within the United States legal system, primary responsibility for making child welfare determinations has historically rested on state governments

(Brown, Whitaker, Clifford, Limb, & Munoz, 2000). However, due to the reluctance of state courts and child welfare agencies to recognize the unique needs of Indian children, state decisions on matters involving Indian children have often had negative impacts on Indian communities. For example, prior to the passage of ICWA, studies by the Association on American Indian Affairs (AAIA) in 1969 and 1974 revealed that approximately 25%–35% of all Indian children were placed in foster homes, adoptive homes, or institutions. These removals were often completed at the hands of state child welfare agents. The following selected statistics from the 1969 and 1974 AAIA studies (Byler, 1977) provide a glimpse at the vast problems created by these removals:

Minnesota:

Foster placement of Indian children was five times that of non-Indian children.

Montana:

Foster placement of Indian children was 13 times that of non-Indian children.

South Dakota:

Forty percent of all adoptions by the state from 1967 to 1974 were Indian children, yet Indian children comprised only 7% of the juvenile population. Foster care placement of Indian children was 16 times that of non-Indian children.

Washington:

The adoption rate of Indian children was 19 times that of non-Indian children, while foster placement of Indian children was 10 times that of non-Indian children.

AN EXPLANATION OF THE REMOVAL RATES

The existence of such drastic removal rates of Indian children from their natural homes was not simply the result of the inability of Indian parents to provide for their children's welfare. Many removals were products of state child welfare agents' ignorance of American Indian culture and child-rearing practices (Hollinger, 1992; U.S. House Report, 1978). One example of this insensitivity to Indian culture exhibited by state child welfare agents is the lack of value they have historically placed on Indian extended families in child-rearing practices. As revealed in Congressional hearings on ICWA prior to its passage, a common basis cited by state child welfare agents for the removal of Indian children from their homes was neglect and mistreatment manifested by parents who often placed their children with extended family members for "long" periods of time (Jones, 1995; U.S. House Report, 1978). However, as Myers (1998) noted, "Indian parents commonly leave a child with relatives who shape the child's tribal clan identity and further the child's cultural knowledge" (p. 7).

Nevertheless, many state child welfare agents found these practices unacceptable.

A second common reason for removal of Indian children was the poverty present in many Indian communities. State child welfare agents often cited this poverty as an obstacle to "proper" parenting (U.S. House Report, 1978). These agents often found no need to measure parental love and affection or cultural fulfillment as offsets to poverty when making child welfare decisions involving Indian children (Myers, 1998).

In addition to their distress over the unwarranted removals of Indian children from their natural families, tribes were also concerned over the ultimate fate of those children who were placed outside of Indian homes. In 1969, nine years prior to the passage of ICWA, a survey of 16 states revealed that approximately 85% of Indian children in foster homes and 90% of non-relative Indian adoptees were living with non-Indian families (U.S. House Report, 1978). These trans-racial placements greatly troubled tribes because they not only jeopardized the continued viability of the tribes themselves but also led to the alienation of Indian children from their unique culture and values (Jones, 1995). Trans-racial adoptions of Indian children placed these children at risk for maladaptive behaviors such as depression, suicide, and antisocial behavior (Coleman, 1993; Matheson, 1996; Monsivias, 1997). In fact, psychological and sociological studies have shown that upon discovery of their ancestry, Indian children raised in non-Indian homes have often suffered from a variety of adjustment disorders attributed to feelings of alienation from their Indian heritage (Berlin, 1978; McCartney, 1975; Westermeyer, 1979).

During the 1978 hearings on ICWA prior to its passage, the position of the National Indian Tribal Chairman's Association on the need for ICWA was as follows:

> Culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their people. Furthermore, these practices seriously undercut the tribes' ability to continue as self-governing communities. Probably in no area is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships. (U.S. House Report 1978, p. 193)

In short, according to the Bureau of Indian Affairs (BIA),

> The legislative history of the Act (ICWA) makes it pervasively clear that Congress attributes many unwarranted removals of Indian children to cultural bias on the part of the courts and social workers making the [child custody] decisions. In many cases children were removed merely because the family did not conform to the

> decision maker's stereotype of what a proper family should be without any testing of the implicit assumption that only a family that conformed to the stereotype could successfully raise children. (Bureau of Indian Affairs [BIA], 1979)

To its credit, in passing ICWA in 1978, Congress recognized the failure of states to identify and value Indian child-rearing practices and the detrimental effect this was having on tribes. The Congressional findings that were incorporated into ICWA reflect this sentiment. In the preamble of ICWA at 25 U.S.C. §§ 1901 (3-5) (2000), Congress acknowledged that:

> (3) there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children ... ;
>
> (4) an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-tribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
>
> (5) states, [in] exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities.

Congress continued by stating that ICWA was intended to serve the "best interests of Native American children and to promote the stability and security of tribes" by providing a means of keeping Indian children in "homes which will reflect the unique values of Indian culture" (ICWA 25 U.S.C. §1902, 2000). Moreover, according to the U.S. House Report (1978), ICWA "seeks to protect the rights of the Indian community and the tribe in retaining its children" by establishing "a Federal policy that, where possible, an Indian child should remain in the Indian community by making sure that Indian child welfare determinations are not based on a white, middle-class standard which in many cases forecloses placement with [an] Indian family" (p. 24).

Despite these admirable goals, the implementation of ICWA has been controversial. Two years after its passage, Fischler (1980) raised questions as to whether ICWA truly serves an Indian child's best interest. Fischler contended that ICWA brings about the subordination of Indian children's individual rights in favor of the rights of their tribes. Fischler wrote, "By regarding Indian children as the property of parents, families, and tribes, the Indian Child Welfare Act will not protect them adequately" (p. 348). Similarly, Bakeis (1996) argued that by placing the interest of the tribe over that of the child and parents, ICWA infringes on personal protections guaranteed by the United States Constitution. Bakeis contended that the "application of ICWA, however, is denying parents of Indian children the privilege of

living under the Constitution" (p. 1) by denying them equal protection under the law.

The long-standing clash between Indian tribal values and those of Anglo-American culture is the very problem ICWA was designed to address. This clash has led many states, the entities ICWA was designed to regulate, to be reluctant to implement its mandates. According to Myers (1998), "State courts and administrative agencies [such as state child welfare service departments], historically possessed with jurisdiction over family law matters, have demonstrated a serious reluctance to follow the Act" (p. 8). For example, many state courts, often averse to ICWA's requirements, have crafted numerous exceptions to the act (Adams, 1994; Jones, 1995; McCarthey, 1993). Further addressing the problem of state compliance, Jones (1997) asserts that many states have interpreted ICWA "in such a manner as to render many of its provisions superfluous" (p. 2).

The historical tendency of states to ignore the mandates of ICWA makes federal oversight of state ICWA compliance critical. One of the tools the federal government can use to monitor how well states are complying with ICWA is Title IV-B of the Social Security Act. In fact, Title IV-B currently provides the only ongoing monitoring tool available to the federal government to examine state ICWA compliance (David Simmons, National Indian Child Welfare Association, personal communication, June 13, 2001). The relationship between ICWA and Title IV-B will be examined in the sections that follow.

Title IV-B, Subpart 1 of the Social Security Act

Title IV-B, Subpart 1 of the Social Security Act is a federally funded formula grant program that provides states and tribal governments with federal support for a wide variety of child welfare services. The child welfare services for which states and tribes may use the Title IV-B funds include pre-placement preventive services to strengthen families and avoid placement of children, services to prevent abuse and neglect, and services related to the provision of foster care and adoption (45 C.F.R., Part 1357, 2000). Since the purpose of this study is to assess state ICWA compliance, the specifics of the tribal IV-B grant process will not be examined. Instead, the study will focus of the state Title IV-B process as it relates to ICWA compliance.

Title IV-B also contains a second subpart (Subpart 2), which refers to the Promoting Safe and Stable Families program (formerly entitled Family Preservation and Support Services). The aim of the Promoting Safe and Stable Families program is to promote services to prevent the removal of children from their homes, reunify

children with their families when possible after removal, and provide services to support adoption when it is not possible for the child to return to his or her home (Cross, Earle, & Simmons, 2000). However, as a part of Subpart 2, the precise operation of the Promoting Safe and Stable Families program also lies beyond the scope of this study.

Funds are allocated among states according to a formula based on 1) the state's population under age 21 and 2) per capita income. These grants also require a 25% nonfederal match (25 U.S.C. § 603, 2001). The law permanently authorizes an annual appropriation of $325 million; however, the amount actually provided is left to the discretion of the annual appropriations process, with FY 2000 funding set at $291,986,000 (Administration for Children and Families [ACF], 2000). The main goal of Title IV-B, Subpart 1, is to help state public welfare agencies, as well as Indian tribes and territories, improve their child welfare services in order to keep families intact (U.S. Department of Health and Human Services, ACF Tribal Resource Directory, 2000). Title IV-B, Subpart 1, provides opportunities for states to receive funding for public social services with the following objectives:

1. Protecting and promoting the welfare and safety of all children, including individuals with disabilities and homeless, dependent, or neglected children.
2. Preventing, remedying, or assisting in the solution of problems that may result in the neglect, abuse, exploitation, or delinquency of children.
3. Preventing the unnecessary separation of children from their families by identifying family problems and assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible.
4. Restoring to their families children who have been removed and may be safely returned, by the provision of services to the child and the family.
5. Assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.
6. Placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate. (Social Security Act, 42 U.S.C. § 625 [a][1], 2001)

In order to be eligible for funds under Title IV-B, Subpart 1, federal law and regulations require states to submit a five-year CFSP for the administration of their child welfare programs. Specifically, Title IV-B, Subpart 1 at 42 U.S.C. § 622, requires that in order to become eligible for payment, states must develop plans that

meet various requirements outlined within the statue for child welfare services in conjunction with the federal government. These requirements are designed to promote safety and permanency for children who enter the state's foster care system. The purpose of CFSPs is to provide "an opportunity to lay the groundwork for a system of coordinated, integrated, culturally relevant family-focused services" (ACF, 1999, p.5). CFSPs detail how each state intends to allocate federal resources for the five years immediately following submission of the plans.

Additionally, states are required to update their CFSPs each of the remaining years by submitting an APSR (C.F.R. Part 1357 et. seq., 2000). APSRs must contain information regarding progress made on each of the goals and objectives established in the CFSPs, changes made to those goals and objectives, and descriptions of each state's child welfare services, including the Independent Living Program and the programs under the Child Abuse Prevention and Treatment Act. States were required to submit new five-year plans June 30, 1999 (ACF, 1999) with the 2000 APSR due by June 30, 2000 (ACF, 2000).

Title IV-B and Child and Family Services Reviews

The Social Security Act Amendments of 1994 authorize ACF to conduct CFSRs of states receiving Title IV-B funding. In January of 2000, the ACF published its final rule on CFSRs that became effective in March. The rule states that the federal government must review all 50 states beginning in FY 2000 and ending in FY 2004. In order to meet this requirement, review teams comprised of regional, central, state office, and tribal personnel will review approximately 17 states each year.

The purpose of these CFSRs is to attempt to promote state compliance with the planning requirements of Title IV-B of the Social Security Act. These reviews cover child protective services, foster care, adoption, family preservation and family support, and independent living and are designed to help states improve both their child welfare services and the outcomes for families and children receiving these services (U.S. Department of Health and Human Services, CFSR Procedures Manual, 2000). CFSPs and APSRs are used by ACF in creating the instruments used to conduct CFSRs. Over the next four years, as part of the review process, a random sample of child welfare cases will be selected and reviewed from each state. ACF administrators will review child welfare cases, and upon

identifying a child as Indian, they will examine if the interests of American Indian children are being addressed through placement with American Indian families, referral to tribes, and other ICWA provisions. However, the sampling procedure being used will result in only a limited number of ICWA cases being reviewed for ICWA compliance.

Indian Child Welfare Act and Title IV-B of the Social Security Act

Under ICWA, Congress granted Indian tribes exclusive legal jurisdiction in child custody proceedings involving Indian children, recognizing "that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children" (25 U.S.C. § 1901(2), 2001). ICWA "established minimum standards for the removal of Indian children from their families and the placement of such children in foster care and adoptive homes which will reflect the unique values of Indian culture" (25 U.S.C. §1902, 2001). The five major areas of ICWA (ACF, 2000) require states to do the following:

1. Identify Indian children by state child welfare agencies and courts as they enter each state's child welfare systems. When a state has reason to believe a particular child involved in a child custody proceeding (as defined by ICWA) is Indian[1], it must contact the child's tribe. If the tribe cannot be determined with certainty, the state should contact the BIA.
2. Provide Indian parents and tribes the right to intervene in state court proceedings for the foster care placement of, or termination of parental rights to, Indian children not domiciled or residing on the reservation of the child's tribe. Notice of this right must arrive at least 10 days prior to the start of such proceedings.
3. Follow placement preferences in foster care and adoptive placements as specified by ICWA. With regard to foster care placements, ICWA directs a state court, state child welfare agency, or private agency to initially place an Indian child in the least restrictive setting that closely resembles his/her family within a reasonable proximity to his/her home. Subsequently, barring good cause to the contrary, the Indian child is ultimately to be placed with extended family members. Failing that, preference must be given in ranking order to a foster home approved by the child's tribe, then to a licensed Indian foster home approved by a non-Indian licensing authority, and then to an institution approved by the child's tribe or run by an Indian organization.

Finally, ICWA allows tribes to create their own foster care placement preferences by

resolution that the state must follow as long as the placement is the least restrictive setting appropriate to the particular needs of the child. ICWA also requires states to follow placement preferences in cases of adoption. Priority preference must be given to 1) members of the Indian child's extended family, 2) other members of the child's tribe, or 3) other Indian families. As in the case of foster care placements, ICWA also allows tribes to create their own adoptive placement preferences by resolution that the state must follow as long as the placement is the least restrictive setting appropriate to the particular needs of the child.

4. Make active efforts to prevent the breakup of Indian families. Active efforts should include using the resources of the tribe, tribal social services, and culturally appropriate "individual caregivers," such as medicine men or other traditional tribal leaders (e.g., elders) whose skills can be used to keep the Indian family together. The state can gain removal of the Indian child only by showing that such remedial and rehabilitative efforts have been made and subsequently failed.

5. Use tribal courts in child welfare matters. ICWA grants tribes exclusive jurisdiction in all child custody matters involving American Indian children who are wards of tribal courts or who reside or are domiciled on Indian reservations. Also, if an Indian child is the subject of a foster care placement, termination of parental rights, or adoption proceeding in state court, the state must transfer the proceeding to the tribe absent objection by either parent or upon petition by either parent/Indian custodian or tribe. This transfer should occur absent good cause to the contrary (ACF, 2000).

As federal law, state governments are required to comply with ICWA in all of their child welfare practices. While many states have policies and procedures that address the specific requirements laid out in ICWA (ACF, 2000), within ICWA, or its subsequent enabling guidelines, there is only one federal requirement that mandates state courts to provide copies of any final adoption decree or order involving an Indian child to the Secretary of the Interior. However, there are no other ongoing mandated reporting requirements under ICWA for states.

Concerned in part with ensuring that states meet the important requirements of ICWA, Congress passed the Social Security Act Amendments of 1994 (Public Law 103–432) amending Subpart 1 of Title IV-B. The Social Security Act Amendments of 1994 specifically amended Subpart 1 of Title IV-B at 42 U.S.C. § 622(b) by adding paragraph (11), which requires state CFSPs to "contain a description, developed after consultation with tribal organizations [as defined in Section 4 of the Indian Self-Determination and

Education Assistance Act] in the State, of the specific measures taken by each State to comply with the Indian Child Welfare Act." Furthermore, states are now required to include an update that describes efforts that are completed or will be completed to improve or maintain compliance with ICWA in their APSRs (ACF, 2000). In short, the passage of the Social Security Act Amendments of 1994 added a requirement to the CFSP and APSR reporting process that provides a means for the federal government to monitor what states are doing to comply with the mandates set forth in ICWA.

Administration for Children and Families Program Instructions

When Congress creates a new federal program, an authorized agency within the executive branch of federal government becomes responsible for implementing the program. In doing so, executive agencies regularly develop guidance and procedures for the administration of the new program. With regard to Title IV-B and the administration of CFSPs and APSRs, ACF has the responsibility of assuring that states meet its planning and reporting requirements. As part of their responsibility in administering Title IV-B, ACF regularly issues guidance to states on how to meet its legislative requirements to qualify for these important resources. The guidance comes in the form of program instructions designed to assist states in understanding and following federal law. According to ACF, its program instructions are "issuances that clarify and explain procedures and methods for operationalizing program policies, add details to program regulations or policy guide requirements, and convey to grantees program guidance information [sic] of actions they are expected or required to take" (ACF, 2001).

With regard to the ICWA language of 42 U.S.C. § 622 (b)(11), ACF program instructions are particularly important because the statutory language itself offers limited guidance as to what specific measures should be reported within CFSPs/APSRs. On August 11, 1995, ACF issued its first program instructions (see Appendix C for a copy of the 1995 program instructions) that elaborated on what states should include in their CFSPs in order to comply with 42 U.S.C. § 622(b)(11). This program instruction was designed to govern IV-B plans submitted for FY 1996 (October 1, 1995 to September 30, 1996). The FY 1996 plans were the first CFSPs to include an ICWA reporting requirement. The 1995 program instructions said that the central element behind 42 U.S.C. § 622 (b)(11) required state plans to be developed "after consultation with Tribal organizations." Consequently, given the importance of the consultation process, ACF recommended how the process should be conducted. First and foremost, tribes and tribal

organizations were to determine who speaks for them. Second, the nature of the tribal/state relationship should be reflected in the appropriate persons of authority (high-level leaders, officials, or managers) from both the state and the tribe(s) participating in consultation/meetings. Moreover, ACF indicated that an optimal format for such meetings would include face-to-face contact with everyone having an opportunity to speak. Existing forums for state/tribal discussion could be used to meet this requirement. Furthermore, ACF specified that flexibility must be allowed to meet individual situations (ACF, 1995). Additionally, the 1995 ACF program instructions recommended that states with no federally recognized tribes consult with urban Indian organizations or national Indian organizations in the development of IV-B plans.

The 1995 program instructions continued by describing the specifics as to what states should include in their 1995 CFSPs. First, ACF required states to make an overall statement of their approach to working with tribes and tribal organizations, including their philosophy and vision for the process. The 1995 CFSP was to contain a description of the Indian population of the state and their geographic location(s) within the state (including on or near reservations as well as urban areas). Second, states were required to place a description of the consultation process used with all of the tribes and tribal organizations in the state, as well as procedures for addressing cases involving children from out-of-state tribes, in their 1995 CFSPs. Third, the 1995 CFSPs should contain all areas of concern raised by the tribes and tribal organizations during the process, even though the plan may not address all of the issues during that year. The purpose of this requirement was to document any understandings, agreements, or unresolved issues between states and tribes. Fourth, the 1995 instructions indicated that through a joint effort, the ACF regional offices would prioritize and address the areas of major concern to tribes, tribal organizations, and states. The expectation of ACF as described in the 1995 instructions was that over time states would improve their compliance with ICWA requirements by establishing and accomplishing appropriate goals in consultation with tribes.

The 1995 program instructions concluded by offering "optional" activities that states could choose to address in their CFSP. These activities included 1) training programs about ICWA for state employees, 2) development of state caseworker compliance expectations or measures, and 3) state partnership agreements with tribes and tribal organizations on areas such as training. Other "suggested" activities included 1) developing culturally appropriate standards for American Indian foster home licensing, 2) recruitment of Indian foster homes, 3) promotion of

relative placement of Indian children, and 4) recognition and use of tribal licensed foster homes for placement of Indian children (ACF, 1995).

On March 25, 1999, ACF issued a program instruction that created new ICWA reporting requirements for CFSPs submitted for FY 2000 to FY 2004. The 1999 program instructions are succinct in comparison to those issued in 1995. Specifically, the 1999 program instruction details the meaning of "specific measures" contained within 42 U.S.C. § 622(b)(11) by asserting the following:

> The State must provide a description, developed in consultation with Indian tribes in the State, of the specific measures to be taken by the State to comply with the Indian Child Welfare Act. These measures must, at a minimum, provide for the identification of Indian children, notification of such to the relevant Tribe, and for giving preference to Indian caregivers when determining out-of-home or permanent placements for Indian children, provided that the Indian caregivers meet all relevant child protection standards [italics added]. (ACF, 1999)

In the opinion of ACF, by including what is described above in their respective CFSPs, states will meet the requirements of 42 U.S.C. § 622(b)(11) and become or remain eligible for federal funds.

On April 18, 2000, ACF issued an additional program instruction designed to provide greater assistance to states in meeting the planning and reporting requirements of Title IV-B. The 2000 program instructions borrow heavily from those issued in 1995. As in 1995, ACF again indicates that the central element of 42 U.S.C. § 622 (b)(11) requires state plans to be developed "after consultation with Tribal organizations." In a mirror image of 1995, ACF stresses again the importance of the consultation process, recommending that care be taken as to how the process is conducted. First and foremost, tribes and tribal organizations should determine who speaks for them. Second, the nature of the tribal/state relationship should be reflected in the appropriate persons of authority (high-level leaders, officials, or managers) from both the state and the tribe participating in consultation/meetings. Moreover, ACF again indicates that the optimal format for such meetings would include face-to-face contact, with everyone having an opportunity to speak. Existing forums for state/tribal discussion may be used to meet this requirement. Finally, ACF specifies that flexibility must be allowed to meet individual situations (ACF, 2000).

Additionally, the 2000 ACF program instructions recommend that states with no federally recognized tribes utilize resources such as urban Indian organizations and national Indian organizations in the development of IV-B plans.

Furthermore, ACF again offers "optional" activities that states may choose to address in their CFSP that include 1) training programs about ICWA for state employees, 2) development of state caseworker compliance expectations or measures, and 3) state partnership agreements with tribes and tribal organizations on areas such as training and support. Other "suggested" activities include 1) developing culturally appropriate standards for American Indian foster home licensing, 2) recruitment of Indian foster homes, 3) promotion of relative placement of Indian children, and 4) recognition and use of tribal licensed foster homes for placement of Indian children (ACF, 2000).

While the 2000 program instructions return additional detail to the CFSP/APSR reporting process that was rescinded with the 1995 program instructions (including optional and suggested activities), not all of what was contained in 1995 was returned in 2000. It is also important to note that the minimum requirements outlined in the 1999 program instructions still remain in effect. Thus, in 1995 (when the first ACF program instructions relating to the inclusion of an ICWA section in CFSPs were issued), ACF had the most extensive program instructions. In 1999, ACF reduced the detail of their program instructions, while in 2000 ACF began to reestablish what was included in the 1995 program instructions.

The reporting requirements of the Social Security Act Amendments of 1994 (Public Law 103-432) provide an important means for the federal government to monitor states' compliance with ICWA's mandates. As noted by the federal government, ICWA is a valuable tool for Indian tribes to preserve their unique culture and heritage (U.S. House Report, 1978). This study will examine whether ICWA's goals are being realized by analyzing the content of all submitted state CFSPs and APSRs. This analysis will evaluate if states are meeting federal requirements in their ICWA compliance activities. Finally, this report will suggest how CFSPs and APSRs can be more effectively used to monitor and promote ICWA compliance.

Methodology

Sample and Procedures

Two primary strategies were used to analyze the Indian Child Welfare Act (ICWA) sections of Title IV-B 1999 Child and Family Services Plans (CFSPs) and 2000 Annual Progress and Services Reports (APSRs) in order to gather data on ICWA compliance aspects. The first strategy involved a nationwide content analysis of all submitted state CFSPs and APSRs, while the second strategy entailed Title IV-B surveys and telephone interviews with Administration for Children and Families (ACF) regional and central administrators. Both strategies are described in detail below.

TITLE IV-B CHILD AND FAMILY SERVICES PLAN/ANNUAL PROGRESS AND SERVICES REPORT CONTENT ANALYSIS

While in 1995 states were required to include an ICWA section in their CFSPs, for purposes of this study, only 1999 CFSPs and 2000 APSRs were analyzed because of their current application and relevance. As mentioned previously, in 1999, in order to qualify for IV-B funding, states were required to submit CFSPs and subsequent APSRs to regional ACF offices. These plans were then sent to the central ACF office in Washington, DC. In an effort to identify and obtain ICWA sections of all states' CFSPs and APSRs, members of the research team contacted ACF administrators at the U.S. Department of Health and Human Services in July 2001 to obtain copies of these sections. When contacted, an ACF administrator stated that all CFSPs/APSRs were housed at James Bell Associates in Arlington, Virginia. Members of the research team then contacted James Bell Associates and requested copies of the ICWA sections of each state's 1999 CFSP and 2000 APSR. In all, 90 plans and progress reports (including Washington, DC's) were received from James Bell Associates for content analysis.

Upon further review, the research team discovered that seven state CFSPs and five APSRs were not received or were missing pages necessary for analysis. Members of the research team contacted representatives from each of these states, and three additional ICWA sections were received. Thus, 44 CFSPs (86.3%) and 49 APSRs (96.1%) were received for analysis, totaling 93 (91.2%) plans and progress reports. It should be noted that nine states did not include ICWA sections within their CFSPs and/or APSRs and were not included in the analysis. Additionally, one state contained the exact same wording for both the CFSP and APSR and was thus entered as missing data for the 2000 APSR analysis. Data from the content analysis questionnaire were entered, coded, and analyzed using the Statistical Package for the Social Sciences (SPSS) database software package. Table 1 contains a list of states from which CFSPs and APSRs were received.

TABLE 1: CHILD AND FAMILY SERVICES PLANS AND ANNUAL PROGRESS AND SERVICES REPORTS REVIEWED

STATES	
Alabama	Montana
Alaska	Nebraska*
Arizona	Nevada
Arkansas	New Hampshire
California	New Jersey
Colorado	New Mexico
Connecticut	New York
Delaware**	North Carolina
Florida*	North Dakota
Georgia*	Ohio
Hawaii	Oklahoma
Idaho	Oregon
Illinois	Pennsylvania*
Indiana	Rhode Island
Iowa	South Carolina
Kansas	South Dakota
Kentucky*	Tennessee*
Louisiana	Texas
Maine	Utah
Maryland***	Vermont**
Massachusetts	Virginia
Michigan	Washington
Minnesota	West Virginia
Mississippi	Wisconsin
Missouri*	Wyoming
	Washington, DC

* denotes states that did not include ICWA sections within their 1999 CFSPs

** denotes states that did not include ICWA sections within their 2000 APSRs

*** denotes states whose 1999 CFSPs and 2000 APSRs are identical

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IV-B SURVEYS AND TELEPHONE INTERVIEWS

An additional strategy to gather more in-depth information on the Title IV-B CFSP/APSR process entailed the use of IV-B surveys and telephone interviews with ACF regional and central administrators. Representatives from each of the 10 regional ACF offices and one administrator from the central ACF office, each having knowledge of the ICWA guidelines and review process, were contacted and asked to complete a IV-B survey questionnaire and/or participate in a telephone interview. Interviews of ACF administrators expanded on the content analysis and solicited information regarding the ICWA compliance and review process, knowledge about ACF's program instruction development, and federal reporting requirements. Administrators were given the option of completing the IV-B survey by phone, E-mail, or fax.

Of the 11 ACF regional and central administrators contacted, 11 interviews[2] were completed. Thus, 100% of the desired ACF administrators participated in the telephone survey. Also, one representative from James Bell Associates was invited to participate in the IV-B survey, but he/she did not have enough knowledge regarding the ICWA sections of CFSPs/APSRs and thus did not complete the survey. Quantitative and qualitative interview questions were coded and analyzed according to the corresponding areas within the content analysis instrument.

Additionally, in an effort to find out why nine states did not include an ICWA section in their CFSPs or APSRs, telephone interviews were conducted with state representatives knowledgeable as to why this section was not included. The research team contacted these states to determine why they did not include an ICWA section, and the most common response from state representatives was, "[Our state] does not have any federally recognized Indian tribes, so there is no report." In fact, of the nine interviews performed, six representatives (66%) stated that they did not include an ICWA section because they did not have any federally recognized Indian tribes within the state.

Measures

This study used two survey instruments to examine the ICWA compliance process within the CFSPs and APSRs. The first instrument involved a content analysis form to examine CFSPs/APSRs, specifically addressing states' goals and objectives in complying with ICWA. (see Appendix A for a copy of the content analysis survey instrument). The intent of the CFSP/APSR analysis instrument was to examine if states were meeting IV-B statutory requirements and additional administrative guidelines as put forth by the ACF program instructions (see Appendices D and E for copies of the 1999 and 2000 program instructions). Four national experts

in IV-B and ICWA reviewed the survey instrument's content and design for clarity and to test its face validity. The content analysis survey instrument was also pre-tested using a convenient sample that included 18 members of a tribal/state ICWA workgroup. The survey instrument was revised following their input.

Two members of the research team completed the content analysis survey instrument for each CFSP and APSR. Where discrepancies occurred on individual survey questions, a third member of the research team then conducted a content analysis to determine the final response and thus improve reliability.

The second survey instrument entailed the use of a questionnaire administered to ACF regional and central administrators (see Appendix B for a copy of the IV-B survey and telephone interview instrument). In an effort to expand on information obtained in the content analysis instrument, a literature review search and recommendations from national IV-B and ICWA experts were used to develop a survey instrument that solicited both qualitative and quantitative information, including information about the ICWA compliance and review process and knowledge about ACF's program instruction development and federal reporting requirements.

Strengths and Limitations of the Research

The two major strategies used to collect and analyze information for this project have a number of strengths. In particular, while few studies in the past focused on ICWA compliance, this study was the first of its kind to specifically examine state CFSPs relating to ICWA compliance. Further strengthening the research was the ability to obtain a nationwide sample of CFSPs that allowed generalizability of the findings.

The combination of different methodologies (content analysis and survey interviews) and the use of quantitative and qualitative methods provided a more comprehensive understanding of the IV-B process. The quantitative aspect of this study enabled the research team to gather important information from the CFSPs/APSRs, while the qualitative element allowed for more in-depth input from those involved in IV-B monitoring and evaluation.

A number of limitations emerged during the data gathering process. First, some questions in the content analysis instrument were drawn from both the Title IV-B statute and the program instructions issued by ACF in years 1999 and 2000. As noted, program instructions issued in 1995 included much more detail as to what should be included in state plans than those issued in 1999. Similarly, the 2000 program

instructions contained more information as to what should be included in their CFSPs and subsequent APSRs than did the 1999 program instructions for states but were not as comprehensive as the 1995 program instructions. However, in developing their 1999 CFSPs, a majority of states had only the statute and the 1999 program instructions available for reference. Consequently, since states did not have, or at least did not reference, the additional information (suggested or optional measures for ICWA compliance) provided by ACF in 1995, it is unlikely they would include such measures when creating their CFSPs in 1999.

The second limitation involved the possibility that states may have included components of ICWA compliance in other sections of the CFSP/APSR. For the purpose of this study, only the ICWA section of CFSPs and APSRs was examined; thus, there is the possibility that states may have included elements relevant to ICWA compliance in other sections (e.g., the recruitment and training of American Indian foster parents may have been included in their recruitment section under the Multi-Ethnic Placement Act). Additionally, analysis of CFSPs/APSRs focused exclusively on the content or face value of the plan. No information was received or analyzed regarding whether the goals and objectives detailed in the plans were put into practice. Thus, plans and progress reports may or may not reflect what is actually occurring.

A third limitation arose from the selection process surrounding the administrators who completed the IV-B survey instrument. The target group for telephone interviews focused on ACF regional and central administrators. Some of the interviewees were either new to their positions or did not fully understand all the relevant aspects of the state ICWA compliance and review process.

Finally, due to time constraints and limited resources, no information was solicited from state officials and tribal leaders regarding ICWA compliance and the CFSP/APSR process. The study evaluates only what states are reporting to ACF regarding their compliance activities and ACF administrators' views on that process. This poses a potential limitation in that all parties involved with the ICWA process did not have the opportunity to voice their respective views as to the effectiveness of the ICWA compliance activities detailed in state CFSPs and APSRs. Because tribes may have a different view than states, including the tribal perspective would have allowed a more thorough examination as to whether the ICWA compliance activities reported in CFSPs and APSRs are actually occurring in practice.

Results

The results have been organized into three sections. The first section contains an analysis of all available 1999 Child and Family Services Plans (CFSP) nationwide and is broken down into three components: 1) consultation process, 2) specific measures, and 3) additional measures. The second section details an analysis of all available 2000 Annual Progress and Services Reports (APSR) nationwide and includes information on the following four components: 1) consultation process, 2) specific measures, 3) suggested measures, and 4) additional measures. As noted previously, the 2000 Title IV-B APSR program instructions contain more detailed information than the previous 1999 CFSP guidelines in that they include instructions on both minimum requirements as well as "optional" or "suggested" activities for Indian Child Welfare Act (ICWA) compliance. The final section consists of IV-B surveys and telephone interviews with Administration for Children and Families (ACF) regional and central administrators.

1999 Title IV-B Child and Family Services Plans Content Analysis

CONSULTATION PROCESS

The Title IV-B statute and ACF program instructions for 1999 CFSPs indicated that these plans should be developed in consultation with Indian tribes and tribal organizations in the state. It should be noted that, although the statute and 1995 program instructions make reference to and define tribal organizations, within the 1999 CFSP program instructions, ACF only specifies that states must consult with tribes. In addition, the 1999 CFSP program instructions did not include the reference to urban Indian organizations or national Indian organizations. These instructions appeared in the 1995 program instructions regarding consultation and plan development. There is no mention of tribal organizations until the 2000 APSR program instructions. Figure 1 details percentages of states that consulted with Indian tribes. Of the 44 CFSPs reviewed, 33 (75%) specified that the state conferred with tribes in the development of their plan. Out of these 33 plans, 22 (66.7%) mentioned specific names of tribes or tribal organizations. Of those states that mentioned specific tribes and/or tribal organizations, 16 (72.7%) plans referred to specific tribes, while 6 (27.2%) referred to specific tribal organizations. For example, Montana's plan mentions, "The ICWA Specialist and other CFSD staff have met with tribal council members and social services staff of every tribe during the past year to discuss the Adoption and Safe Families Act ... and other topic areas of concern to the tribes ... ." Of the 11 plans that made no mention of consultation, eight (72.7%) were states with no federally recognized tribes.

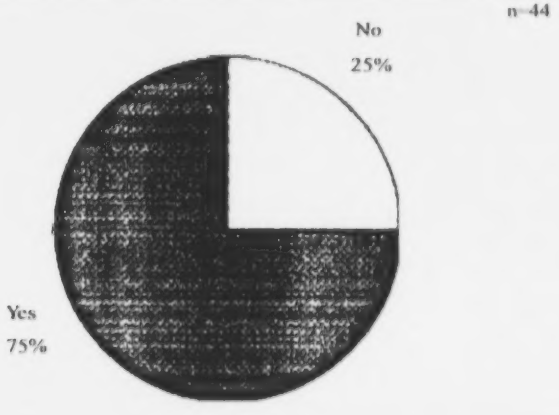
SPECIFIC MEASURES

Along with provisions on tribal consultation, ACF also requires states to include "specific measures" for ICWA compliance in their 1999 CFSP program instructions. These specific measures include "the identification of Indian children, notification of such to the relevant Indian tribe, and for giving preference to Indian caregivers when determining out-of-home or permanent placements for Indian children, provided that the Indian caregivers meet all relevant child protection standards" (Administration for Children and Families [ACF], 1999).

With regard to specific measures, Figure 2 depicts each of the three required ACF components. Specifically, of the 44 CFSPs reviewed, 15 plans (34.1%) indicated the development of specific measures for the identification of an Indian child, while 12 plans (27.3%) indicated that states had developed specific measures regarding notification to the Indian child's relevant tribe. Additionally, 18 state plans (40.9%) revealed that the state had developed specific measures that give preference to Indian caregivers when determining out-of-home or permanent placements for Indian children. Of those 18, only one (5.6%) state plan indicated that they have procedures in place to ensure that Indian caregivers meet all relevant child protection standards.

Although the above-mentioned measures are required inclusions for the CFSPs, many states did not incorporate all three of these measures

FIGURE 1: STATE CONSULTATION WITH INDIAN TRIBES (1999)



into their plans. In fact, over half (52.2%) of the CFSPs did not include any of the specific measures outlined by ACF guidelines. Specifically, only nine (20.5%) of the state CFSPs referenced all three of these specific measures, seven (15.9%) mentioned two of the specific measures, and five (11.4%) mentioned only one of the specific measures. Figure 3 contains information regarding state inclusions on the ACF required specific measures.

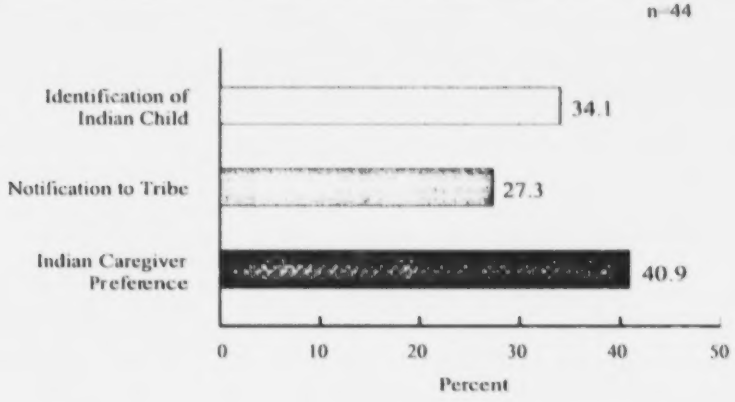
ADDITIONAL MEASURES

Although both the statute itself and the ACF program instructions for the 1999 CFSPs only contain provisions on tribal consultation and specific measures to ensure ICWA compliance, the research team analyzed additional components contained within state plans. These areas included policies and support services, as well as new or existing positions/programs relating to ICWA. However, due to the fact that these components were not included within the CFSP program instructions, states were not required by ACF to include these measures in their plans. Therefore, these results are reported in order to give a descriptive overview of additional components contained within the CFSPs.

Policies and Support Services

With regard to collaboration/trust-building/communication activities, CFSP analysis revealed that

FIGURE 2: EVIDENCE OF SPECIFIC MEASURES FOR INDIAN CHILD WELFARE ACT COMPLIANCE (1999)

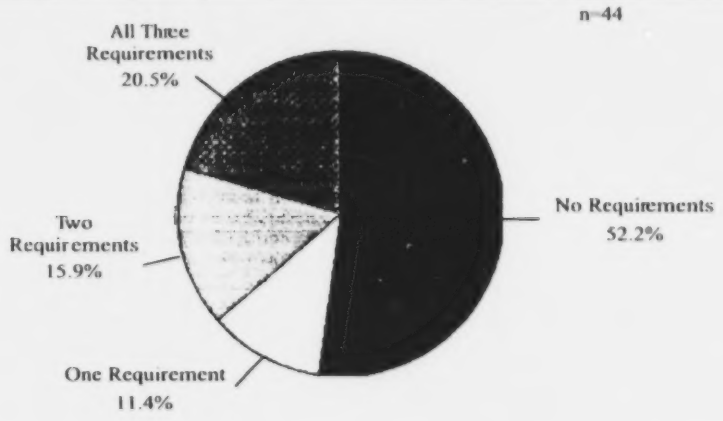


agreements/contracts developed for various child welfare purposes were mentioned most in establishing or promoting collaboration between states and tribes. For example, California's CFSP mentions the passing of a bill that provided the California Division of Social Services broad authority to enter into agreements with tribes to administer child welfare services. Oregon's plan details five actions recommended to strengthen the relationship between the state and tribes: 1) improved data collection on Native children in the state system, 2) provision of tribal access to resources, 3) training and technical assistance, 4) formal government-to-government relationships, and 5) a holistic services approach.

Additionally, in an effort to collaborate with tribes on Indian child welfare issues, both states and tribes appointed representatives from each arena to new or existing committees. For example, the state of South Dakota reports that their tribal liaison program specialist meets with ICWA directors and that this effort "has been a valuable process in building relationships between the state and the tribes in order to promote permanency for children."

With regard to policy and procedure development, 32 (72.7%) states indicated within their CFSP that they had or will develop specific policies, procedures, or protocol for ICWA compli-

FIGURE 3: ADMINISTRATION FOR CHILDREN AND FAMILIES MINIMUM REQUIRED SPECIFIC MEASURES (1999)



ance. For example, the state of Idaho reports that their ICWA program specialist reviews all cases involving an Indian child for ICWA compliance. The Idaho plan also mentions that this specialist provides technical assistance and case consultation on specific cases when necessary. Additionally, both a social worker and a supervisor staff reviewed all open Indian cases and use a standardized case review tool to address issues such as tribal membership, notification, active efforts, removal, and placement preferences. The state of Minnesota also indicates they have taken several steps to ensure ICWA compliance, including 1) developing a revised ICWA section for their child welfare manual, 2) offering ICWA training at 14 different sites throughout the state, and 3) collaborating with the Indian Child Welfare Advisory Council to review alleged noncompliance with ICWA.

Out of the 44 CFSPs reviewed, 14 (31.8%) included information on technical assistance or computer support being provided to tribes/tribal organizations. The state of Montana indicates they provide technical assistance to tribal social services staff on ICWA, available programs and services, American Indian child and family issues, and funding streams. In addition, according to Montana's CFSP, tribal social services staff, tribal courts, and tribal leaders are provided training and technical assistance on the Adoption and Safe Families Act (ASFA) requirements as well as its impact on Indian children and families. Finally, tribes in Montana may request technical assistance regarding adoption licensing standards for kinship care and drafting tribal code provisions to establish permanency alternatives to termination of parental rights.

With regard to funding, 20 (45.5%) state plans indicated that specific resources or funding had been allocated for ICWA compliance. For example, the state of North Dakota indicated that they provide 58% of the cost for a consultant who works exclusively for all tribes within the state. Figure 4 depicts the policies and support services contained in the CFSPs. Additionally, the state of Oregon mentioned they had submitted an application for Children's Justice Act funding for FY 2000 to provide training to all Indian child welfare workers.

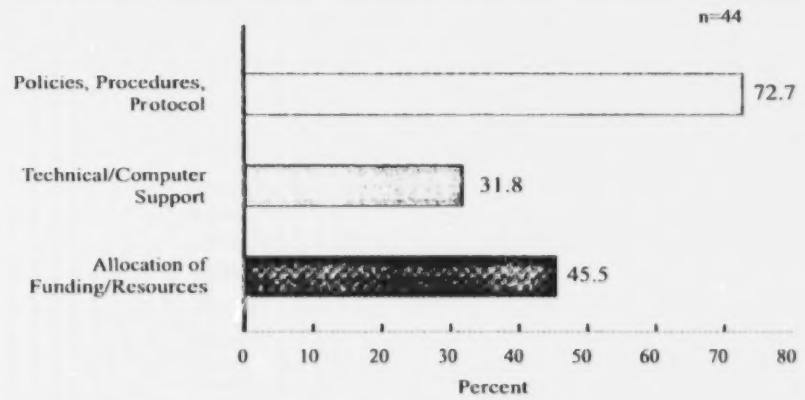
Additional Positions/Programs

Of the 44 CFSPs reviewed, 20 (45.5%) contained evidence regarding the existence of a position and/or program or the creation of a new position and/or program specifically related to ICWA. Out of those 20 plans, five (25%) states indicated that they had created a new ICWA staff position, seven (35%) indicated that they had an existing ICWA staff position, two (10%) specified that they had created a new ICWA program, and three (15%) specified that they already had an existing ICWA program. Rhode Island's plan provides an

example of a state's use of a new ICWA staff position to assist the state in complying with ICWA. It mentions that a new ICWA specialist within the U.S. Department of Health and Human Services will begin work with the Rhode Island State/Tribe Committee to "address some of the underlying concerns" relating to ICWA. Additionally, the state of California mentions the creation of a new ICWA training program for state judges to educate them on ICWA compliance through a court improvement project.

In addition to new and/or existing staff/programs, three (15%) states specified they had created a new planning committee associated with ICWA, while five (25%) states indicated they already had an existing planning committee. Finally, four (20%) states mentioned some "other" type of position/program in their CFSP. Examples of "other" programs/positions include 1) Alaska's creation of a statewide ICWA advisory committee, 2) Nevada's Tribal ICWA Association, 3) Washington's Region 2 Indian Child Welfare Workgroup, and 4) Wisconsin's creation of a pilot program to help tribes transition from county-run child welfare services to tribally-run child welfare services. Figure 5 details the additional positions/programs specified by states within their CFSPs.

FIGURE 4: POLICIES AND SUPPORT SERVICES INCLUDED IN CHILD AND FAMILY SERVICES PLANS (1999)

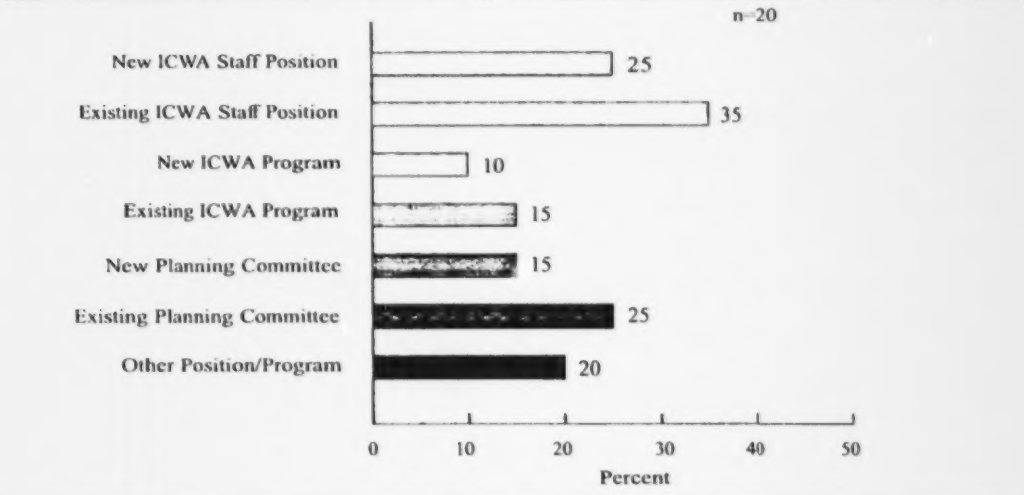


2000 Title IV-B Annual Progress and Services Reports Content Analysis

CONSULTATION PROCESS

Within the 2000 APSR program instructions, ACF indicates that "States' actions must be developed 'after consultation with Tribes and Tribal organizations' " (ACF, 2000). Moreover, in states where there are no federally recognized tribes, "other resources such as urban Indian organizations and national Indian organizations should be consulted" (ACF, 2000, p. 3).This consultation should include face-to-face meetings with tribes and/or tribal/Indian organizations with every participant given a chance to speak. Of the 48 APSRs reviewed, 30 (62.5%) plans indicated that the state had consulted with Indian tribes, tribal organizations, or Indian organizations. Out of those 30 plans, 20 (66.6%) mentioned face-to-face meetings with tribes, tribal organizations, or Indian organizations, 16 (53.3%) included names of specific tribes the state had consulted with, and three (10%) plans included names of specific tribal or Indian organizations that had been consulted. Of the 13 states included in the analysis with no federally recognized tribes, only

FIGURE 5: ADDITIONAL POSITIONS/PROGRAMS REFERENCED IN CHILD AND FAMILY SERVICES PLANS (1999)

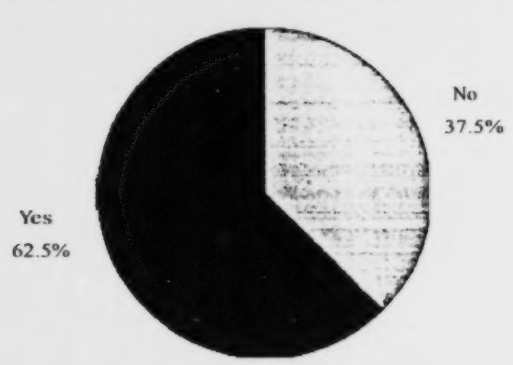


three plans (21.4%) mentioned that the state consulted with an urban or national Indian organization. For example, both Illinois and Virginia, states with no federally recognized tribes, indicated they had consulted with the following Indian organizations: the Native American Foster Parent Association and the Virginia Council on Indians, respectively. It should be noted that the research team found it difficult to determine whether the consultation process referenced in the 2000 APSRs occurred for the development of the CFSP only, for the development of the APSR only, or for the development of both. Figure 6 details the states that consulted with Indian tribes, tribal organizations, or Indian organizations.

High-Level Leaders

Of the 30 plans that indicated states consulting with Indian tribes/tribal organizations, 16 (53.3%) contained evidence that high-level leaders, officials, or managers from both state and tribe were consulted in a manner that reflected a government-to-government relationship. It should be noted that no information was solicited regarding the context of consultation or the effectiveness of the consultation process. High-level leaders included tribal council representatives, representatives from state human services departments, regional administrators, and representatives from the Governor's office. For example, the state of Michigan indicated that a tribal representative was selected as a co-chair to create a partner-

FIGURE 6: STATE CONSULTATION WITH INDIAN TRIBES, TRIBAL ORGANIZATIONS, OR INDIAN ORGANIZATIONS (2000)



ship with a subcommittee on ICWA implementation, while the state of Minnesota mentioned that the Department of Human Services Commissioner met with the tribal chairs of all 11 Minnesota tribes.

IV-B and Other Discussion Forums

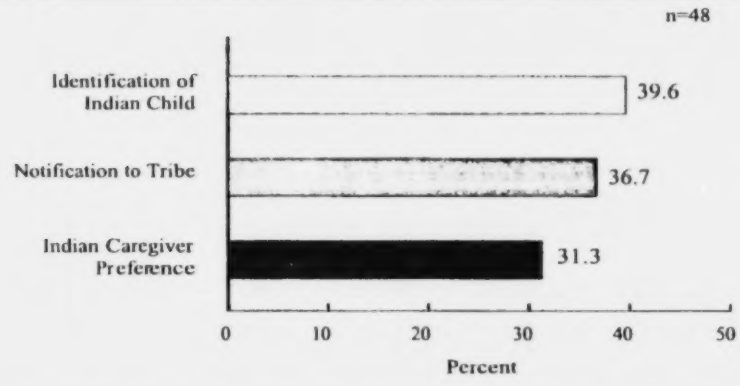
Twenty (41.7%) out of 48 states specified in their APSR that discussions were held during an existing forum or that a forum was created specifically for the purposes of IV-B planning. Examples of forums include Alaska's Tribal State Collaboration Group and Michigan's Tribal/State Partnership Team meetings.

SPECIFIC MEASURES

Regarding specific measures, Figure 7 details the required ACF components for the APSRs. It should be noted that the specific measures referenced are those detailed in 1999 that remain in effect in 2000. Nineteen (39.6%) out of 48 states mentioned specific measures for identification of an Indian child within their APSRs, while 18 (36.7%) included specific measures for the notification of the Indian child to the relevant tribe.

Additionally, 15 (31.3%) states referenced the development of specific measures that give preference to Indian caregivers in out-of-home or permanent placement determinations for Indian children. However, only three (20%) of those 15

FIGURE 7: EVIDENCE OF SPECIFIC MEASURES FOR INDIAN CHILD WELFARE ACT COMPLIANCE (2000)



states with measures for Indian caregiver preference indicated there were procedures in place to ensure that these caregivers meet all relevant child protection standards.

Similar to the 1999 CFSPs, most states (75%) did not include all of the required specific measures within their 2000 APSRs. Figure 8 addresses the state APSR inclusions with regard to specific measures required by ACF. Twelve APSRs (25%) mentioned all of the required specific measures, seven (14.6%) reported on two requirements, and three (6.3%) reported on one requirement. Additionally, more than half (54.1%) of the states did not report on any of the requirements.

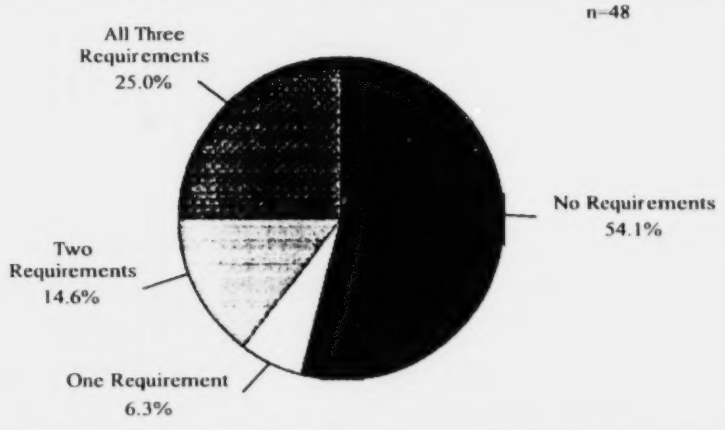
SUGGESTED MEASURES

Suggested measures can be broken down into three components: 1) compliance measures, 2) partnership agreements, and 3) foster home licensing and recruitment. These three components are detailed below.

Compliance Measures

In addition to the required specific measures, ACF also included "suggested" components for ICWA compliance within their APSR program instructions. One of these suggested components addresses training provisions. Overall, 21 (43.8%) states referenced training provisions for

FIGURE 8: ADMINISTRATION FOR CHILDREN AND FAMILIES MINIMUM REQUIRED SPECIFIC MEASURES (2000)



ICWA compliance. ACF also suggests that states include information on the "development of state caseworker compliance expectations or measures" within their progress reports (ACF, 2000). Of the 48 reviewed APSRs, 19 (39.6%) mentioned the development of state caseworker compliance measures.

Partnership Agreements

A third suggested component detailed in the ACF guidelines references state partnership agreements with tribes and tribal organizations to assist states in complying with ICWA. A number of APSRs detailed partnership agreements between tribes/tribal organizations and their respective states, such as a memorandum of agreement (MOA) or memorandum of understanding (MOU), an intergovernmental agreement (IGA), a working agreement, or some other type of agreement. More specifically, out of 48 APSRs analyzed, seven (14.6%) referenced an MOA or MOU between the state and tribe and/or tribal organization, six (12.5%) referenced an IGA, three (6.3%) referenced a working agreement, and 16 (33.3%) referenced some "other" type of partnership agreement. Examples of "other" partnership agreements include the following: Arizona's agreement to create training curriculum; Virginia's plans to "develop a formal or informal agreement [between the state and the Virginia Council on Indians] for working together on common child welfare issues and concerns;" and Washington's data-sharing agreement that provides tribal access to the Children's Administration Case and Management Information System. Figure 9 details the partnership agreements evidenced in the reviewed APSRs.

Foster Home Licensing and Recruitment

Final suggestions detailed in the APSR program instructions include information on foster home licensing and recruitment. The guidelines state, "Other suggested activities include: developing culturally appropriate standards for American Indian foster home licensing, recruiting of Indian foster homes, promotion of relative placement of Indian children, and recognition and use of tribal licensed foster homes for placement of Indian children" (ACF, 2000).

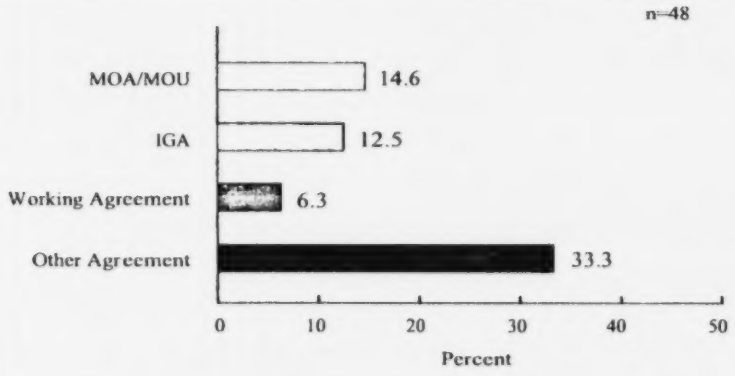
Out of 48 APSRs, 11 (22.9%) referenced culturally competent or culturally appropriate standards for foster care licensing. For example, the state of Florida references the "establishment of minimum federal standards for the ... placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture ... ," while the state of Washington indicated they want to "maintain/expand intergovernmental agreements with the Yakima Nation for provision of culturally appropriate services ... ."

Additionally, six (12.5%) state APSRs included information on Indian foster home recruitment, while four (8.3%) included information on the recruitment or promotion of relative (kinship) placement. Eight (16.7%) state progress reports contained information on the recognition and use of tribal licensed foster homes for placement of Indian children, and four (8.3%) made mention of some "other" type of recruitment efforts. Examples of "other" recruitment efforts include the development of a program to recruit American Indian child welfare social workers in the state of Illinois and discussions on the development of a plan for the recruitment of Indian foster homes in the state of Mississippi. Figure 10 depicts recruitment efforts detailed in the APSRs reviewed by the research team.

ADDITIONAL MEASURES

Although the APSR program instructions make reference to tribal consultation, specific measures to promote ICWA compliance, and suggested measures, the research team also analyzed additional components within these state progress reports. As mentioned in the previous section on the 1999 CFSPs, these additional components are reported to give a descriptive overview of APSR inclusions and not for comparison purposes. Additionally, reporting on these components may contain some overlap from measures in other sections.

FIGURE 9: PARTNERSHIP AGREEMENTS BETWEEN STATES AND TRIBES/TRIBAL ORGANIZATIONS (2000)

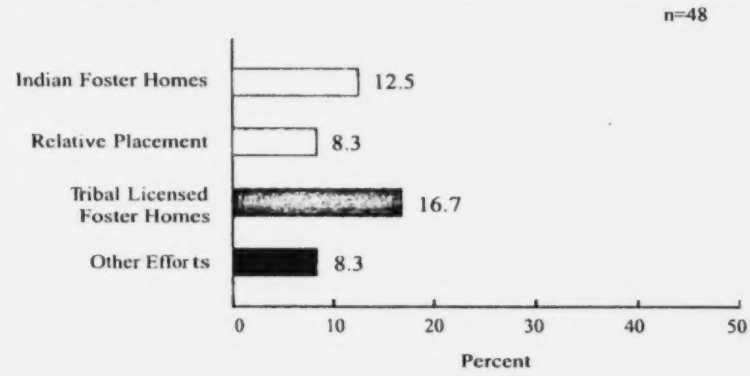


Policies and Support Services

In addition to the creation and current existence of partnership agreements, a review of 2000 APSRs indicated that a number of states are engaging in various other collaboration/trust-building/communication activities with tribes and/or tribal organizations. For example, Michigan revealed that their tribal/state partnership team that discusses child welfare issues followed a traditional consensus model of decision-making. According to the state, this method of decision-making was modeled after the traditional "talking circle" approach used by various tribes within the state. The state asserted the "circle" model of decision-making was used out of respect for the traditions of the state's tribes.

Other states and their respective tribes reported on taking other unique approaches to overcoming cultural differences between tribes and states. For example, the state of Mississippi mentioned that representatives of the Mississippi Band of Choctaws provided a cultural workshop at the 4th Annual Mississippi Permanency Partnership Conference, which included traditional Choctaw dancing. Additionally, New York and Oklahoma have indicated that they are providing increased training to their state employees on ICWA and on cultural sensitivity when addressing Indian child welfare matters. New York's Office of Child and Family Services referenced the provision of special training programs to social services

FIGURE 10: RECRUITMENT EFFORTS REFERENCED IN ANNUAL PROGRESS AND SERVICES REPORTS (2000)



districts on cultural sensitivity and diversity, while the state of Oklahoma mentioned that they hold biannual meetings with tribal Indian child welfare staff and state child welfare tribal liasons to provide training and facilitate tribal-state networking.

Regarding policy and procedure development, 35 (72.9%) out of the 48 APSRs reviewed indicated the state had or will develop specific policies, procedures, or protocol to ensure ICWA compliance. For example, the state of New Jersey mentioned that state officials have "put into written policy the procedures/protocol developed with the New Jersey Commission on Native American Indian Affairs governing the placement of tribal children."

In reference to technical assistance or computer support, only eleven (22.9%) APSRs indicated that the state is providing these types of support to their respective tribes and/or tribal organizations. The state of Alaska mentioned a state-sponsored Web page as well as the establishment of an ICWA help desk in the Anchorage Division of Family and Youth Services. The state indicated that they will "pay for the operations of the desk, including computer costs and other technical assistance ... ." Wyoming's Department of Family Services references the provision of "seven training and technical assistance sessions to the two tribes covering a variety of topics ... ."

Finally, 20 (41.7%) of the 48 state plans contained evidence in the document of specific resources or funding allocated for ICWA compliance. For example, Idaho references the expansion of "resources of training, recruitment, and an ICWA Program Specialist," while Minnesota mentions the provision of "funding annually to tribes for family preservation, reunification, and special focus." Figure 11 contains the policies and support services detailed within APSRs.

Additional Positions/Programs

Out of the 48 APSRs reviewed, 23 (47.9%) contained evidence regarding the creation of a new position/program or existence of a position/program specifically related to ICWA. Out of those 23 plans referenced above, four (17.4%) states indicated that they had created a new ICWA staff position, 11 (47.8%) indicated that they already had an existing ICWA staff position, three (13%) indicated that they had created a new ICWA program, and six (26.1%) indicated that they already had an existing ICWA program.

Additionally, two (8.7%) states mentioned the creation of a new planning committee associated with ICWA, while six (26.1%) states mentioned that they already had an existing planning committee. Finally, five (21.7%) states referenced some "other" type of position/program in their APSR. Figure 12 details the additional positions/programs specified by states within their APSRs.

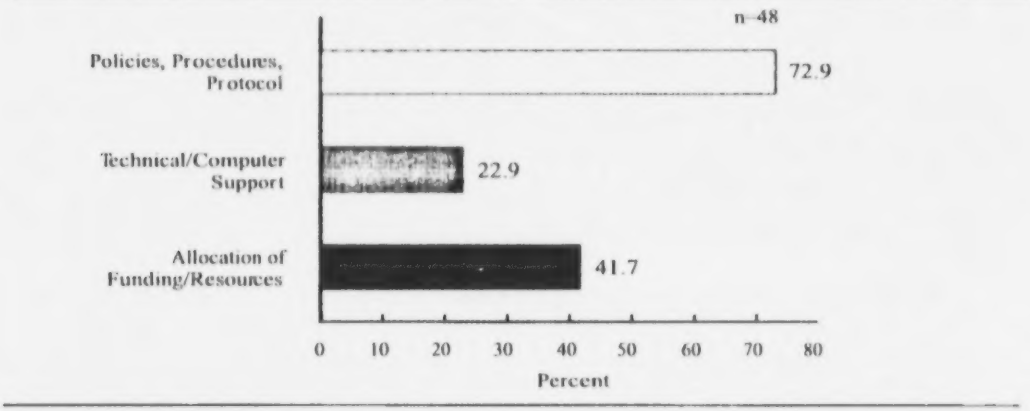
IV-B Surveys and Telephone Interviews

The IV-B survey and telephone interview results have been organized into the following five components: 1) CFSP and APSR revision and feedback; 2) usefulness of the CFSPs/APSRs with regard to ICWA compliance; 3) Child and Family Services Reviews (CFSR); 4) development of 1999 and 2000 program instructions; and 5) overall quality of CFSPs/APSRs.

With regard to the first component, the first two survey questions asked ACF administrators whether they had reviewed the ICWA portion of the Title IV-B CFSPs and the APSRs within their region. Out of the 10 regional administrators who answered the questionnaire, nine (90.9%) indicated they had reviewed the ICWA section of both the CFSP and the APSR within their region. Additionally, when asked whether they provide feedback/suggestions to states regarding the quality of their ICWA sections, six (60%) ACF regional administrators indicated they did give feedback/suggestions.

Regarding the usefulness of CFSPs/APSRs, all 11 regional and central ACF administrators (100%) said that these plans are being used or will be used to assist states in complying with ICWA. For example, one regional administrator responded with the following statement: "These

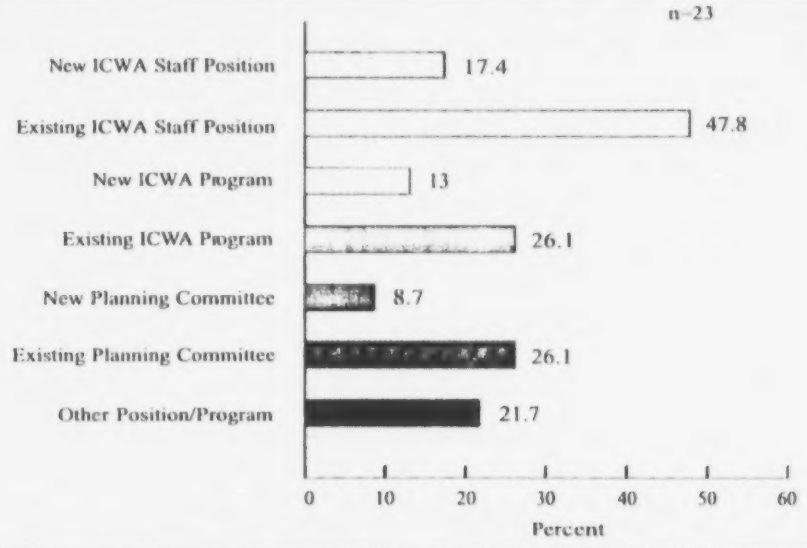
FIGURE 11: POLICIES AND SUPPORT SERVICES INCLUDED IN ANNUAL PROGRESS AND SERVICES REPORTS (2000)



plans are used in various discussions with the states when issues arise involving compliance with the ICWA requirements and when there are training needs identified." Another regional administrator indicated that "each state will have a Program Improvement Plan through which they will set forth action steps that will be taken to correct identified weaknesses in complying with ICWA. The Program Improvement Plan will also establish benchmarks to measure the State's progress in implementing the steps in the plan."

Regional ACF administrators were also asked whether the CFSPs/APSRs are or will be used in the statewide assessment in the CFSR. Nine (90.0%) of the participants answered "yes" in response to this question. One regional administrator indicated that "States are being encouraged to use the CFSP/APSR process to develop measurable outcomes comparable to those considered in the CFSR." Additionally, a regional administrator mentioned that "the States could use these plans as a guide and point of reference

FIGURE 12: ADDITIONAL POSITIONS/PROGRAMS REFERENCED IN ANNUAL PROGRESS AND SERVICES REPORTS (2000)



as they develop their statewide assessment. The goals, objectives, and accomplishments should reflect how and what the State is currently doing." It should be noted that one administrator did not answer this question but wrote under the question, "States may/should be building on the process used to develop their plans and annual updates. Therefore, the information that theoretically is in the plans/APSRs could be used to further elaborate in the statewide assessment."

When asked about how CFSP and APSR program instructions were developed, seven (63.6%) administrators stated that the Children's Bureau[3] wrote the program instructions, while only one (9.1%) administrator stated that the program instructions were developed according to ICWA. For example, one regional administrator indicated that "Usually, the PI [program instruction] is developed in our Central Office and sent to the Regional Offices for review and comment." Additionally, two (18.2%) administrators indicated that they did not know how the instructions were developed. Of those two respondents that did not know how the program instructions were developed, one was not working under the Department of Health and Human Services at the time they were developed, while the other respondent did not provide any detail as to why he/she could not answer the question.

Finally, regional administrators were asked to rate, on a scale of 1–4 (where 1 = poor [below minimum requirements]; 2 = satisfactory [meets minimum requirements]; 3 = good [above minimum requirements]; and 4 = excellent [well above minimum requirements]), the overall quality of CFSPs/APSRs as they relate to meeting federal ICWA requirements. While no regional administrators answered with "1" (i.e., poor), their responses ranged from 2–3, with an overall mean of 2.7. One regional administrator did not respond to this question. Figure 13 details the questionnaire responses regarding the overall quality of the CFSPs/APSRs.

FIGURE 13: OVERALL QUALITY OF INDIAN CHILD WELFARE ACT SECTIONS WITHIN CHILD AND FAMILY SERVICES PLANS/ANNUAL PROGRESS AND SERVICES REPORTS

Discussion

The purpose of the current study was to build upon previous research conducted on Indian Child Welfare Act (ICWA) compliance. The current study responds to the lack of research on ICWA compliance by examining a nationwide sample of the ICWA section within Title IV-B Child and Family Services Plans (CFSP) and Annual Progress and Services Reports (APSR). While CFSPs and APSRs are required of states for funding eligibility, these documents have given states the opportunity to report on the steps they are taking for ICWA compliance. Results of this study are also helpful in addressing five important issues: 1) tribal consultation (1999 CFSPs and 2000 APSRs); 2) specific measures required for ICWA compliance (1999 CFSPs and 2000 APSRs); 3) suggested components to be included in IV-B plans (2000 APSRs); and 4) additional measures for evaluation of ICWA compliance activities (1999 CFSPs and 2000 APSRs).

Tribal Consultation (1999 Child and Family Services Plans and 2000 Annual Progress and Services Reports)

Administration for Children and Families (ACF) program instructions for both the CFSP and APSR lacked detail and clarity as to what should be included, thus potentially impeding states' understanding of their federal requirements and limiting what states actually included in their plans/progress reports. It should be noted, however, that although the 1999 CFSP program instructions were very brief, the 2000 APSR program instructions included an attempt to encourage states to incorporate other measures (suggested and optional) within their APSRs. This, along with the previously issued 1995 program instructions, allowed states the opportunity to add additional measures into their plans and progress reports detailing ICWA compliance steps that may not otherwise have been referenced.

With regard to tribal consultation, ACF guidelines specifically assert that IV-B plans must be developed in consultation with tribes and/or tribal organizations. Within the CFSPs, a majority of states (75%) mentioned tribal consultation; however, there were still a number of states that did not specify tribal consultation measures or stated that they would consult with tribes in the future. Of the states that did not consult with tribes and/or tribal organizations, a majority of them did not have any federally recognized tribes within their boundaries.

Similar to the 1999 CFSPs, an analysis of the 2000 APSRs revealed that a majority of states (62.5%) mentioned consultation with tribes, tribal organizations, or Indian organizations, although it was difficult for the research team to determine

whether the consultation mentioned occurred in the CFSP or APSR planning process. Additionally, the APSR program instructions indicated that states with no federally recognized tribes should consult with urban and/or national Indian organizations and participate in existing forums that include face-to-face contact. Surprisingly, only three of the 13 states with no federally recognized tribes reported consulting with urban/national Indian organizations. In addition, less than half of the states that reported tribal consultation actually had an existing forum for discussion.

Overall, a majority of states reported consulting with tribes, tribal organizations, or Indian organizations in the development of the CFSPs/APSRs, although no information was solicited regarding an operational definition of "consultation" or the effectiveness of the tribal/state consultation process. Analysis also revealed that most states without any federally recognized tribes were not consulting with Indian tribes or Indian organizations as they developed their plans. In fact, nine states did not even include ICWA sections in their CFSPs/APSRs. It is important to note that ICWA governs every state, including those without federally recognized tribes. Moreover, Title IV-B makes no distinction between states with federally recognized tribes and those without in its ICWA reporting requirements.

Specific Measures (1999 Child and Family Services Plans and 2000 Annual Progress and Services Reports)

With regard to specific measures required for ICWA compliance, only 15 (34.1%) of the CFSPs analyzed included mention of all three of the specific measures identified in ACF's guidelines. More importantly, over half of the states' CFSPs (52.2%) did not include information on any of the three specific measures.

Similar to the CFSPs, only 25% of the APSRs included identifying components regarding all three specific measures, and over half (54.1%) of APSRs did not mention any of the three specific measures. Thus, a troubling pattern emerged regarding states' lack of effort in reporting or following even the minimal guidelines set forth by ACF. With over half of all state CFSPs/APSRs not reporting on or mentioning any of the three specific measures, one of two things must be concluded: 1) these states do not have measures in place with regard to ICWA requirements for the identification of an Indian child, notification to the relevant tribe, Indian caregiver preference, or established child protection standards; or 2) these states are not taking the time to report on the specific measures in their respective CFSPs/APSRs.

Findings from the IV-B survey and telephone interviews with ACF administrators revealed two additional troubling patterns with regard to the inclusion of specific measures. First, while nearly all ACF regional administrators (91%) reported reviewing the ICWA sections within the CFSPs/APSRs and 60% said they provided feedback to states regarding the quality of the plans/progress reports, it appears that 1) far too few ACF regional administrators are actually providing feedback to states regarding the ICWA sections of their CFSPs/APSRs; 2) states are not incorporating ACF's feedback into their plans; and/or 3) the feedback given by ACF relates to issues other than what should be reported on in the ICWA section of their plans. Second, after reviewing the ICWA sections of state plans/progress reports, ACF regional administrators rated their overall quality between "satisfactory" and "good" (meaning slightly above minimum requirements). Due to the fact that nearly all states did not follow ACF's guidelines in reporting on the minimal required specific measures, it appeared troubling that ACF administrators would rate these plans as having met required standards.

Suggested Components (2000 Annual Progress and Services Reports)

Besides the specific measures referenced above, ACF included "suggested" components for ICWA compliance that could be included in the APSRs. One of these suggested components concerns state partnership agreements with tribes and/or tribal organizations. Overall, results showed that a majority of states reported involvement in some sort of agreement with tribes regarding ICWA compliance. Specifically, 29 out of 48 (60.4%) APSRs contained evidence of some type of an agreement (i.e., Memorandum of Agreement [MOA]/Memorandum of Understanding [MOU], Intergovernmental Agreement [IGA], working, or other) between states and tribes. Thus, it appears from the analysis that, in a majority of cases, states report working with tribes to develop ICWA compliance procedures. Here, it should be noted again that no information was solicited from tribes regarding the actual implementation of these agreements.

On the other hand, aside from tribal/state agreements, for every other suggested measure, less than half of the states made mention of these in their APSRs. In fact, the second highest suggested measure after agreements was training provisions (43.8%). The third highest was caseworker compliance measures (39.6%), with all other

suggested measures being found in less than 23% of APSRs. Thus, of the suggested measures offered by ACF, with the exception of partnership agreements, a majority of states are not heeding ACF's suggestions when creating their APSRs.

Additional Measures (1999 Child and Family Services Plans and 2000 Annual Progress and Services Reports)

Regarding additional measures, almost three-quarters (72.7%) of the reviewed CFSPs indicated that the state had or will develop policies, procedures, and protocol for ICWA compliance. About one-third (31.8%) included information on technical assistance or computer support. It is important to note that the research team found it difficult to operationalize the terms "technical assistance" and "computer support" in a manner that encompassed all state plans and, therefore, may not have utilized the same definition as the various states in classifying these terms. Additionally, almost half (45.5%) of the reviewed CFSPs made mention of specific resources or funding allocated for ICWA compliance. Finally, over one-third (35%) of the states indicated they had an existing ICWA staff position.

Similar to the CFSPs, of the reviewed APSRs, 72.9% indicated states had or will develop policies, procedures, or protocol for ICWA compliance. Mention of technical assistance or computer support decreased in 2000, with 22.9% of APSRs containing information on these topics. Specific resources or funding allocated for ICWA compliance was mentioned in 41.7% of APSRs, while 47.8% of states included information on an existing ICWA staff position.

Overall, when comparing 1999 and 2000 on these additional measures, the numbers appear consistent. A large majority of the states in both the CFSPs and APSRs (72.7% and 72.9% respectfully) indicated they had in place or will develop specific policies, procedures, and protocol for ICWA compliance. Thus, broadly speaking, it appears that states report having procedures in place for ICWA compliance, but with regard to the required specific measures mentioned earlier, states do not have or are not detailing these components. Only one-third of states mentioned providing technical assistance and/or computer support, while less than half allocated specific resources or funding for ICWA compliance. Interestingly, while just over one-third of states mentioned an existing ICWA staff position in 1999, this number increased to nearly half in 2000. One explanation for this could be that, with the added detail to the APSR program instructions that encouraged states to include suggested or optional measures, they may have felt more inclined to include additional steps they were taking to comply with ICWA.

Recommendations

The purpose behind the Indian Child Welfare Act (ICWA) reporting requirements of Title IV-B, Subpart 1 is to provide a means for the federal government to evaluate every state's ICWA compliance procedures. Therefore, it is imperative for those requirements to be clear and detailed as to what states should include in the ICWA section of their Child and Family Services Plans (CFSP) and Annual Progress and Services Reports (APSR). The mandated state requirements should contain empirically verifiable outcome measures for monitoring ICWA. It is also important for states to more thoroughly and accurately address ICWA reporting requirements of IV-B and for tribes to become more involved in the process. This section outlines how this can be achieved through the following recommendations: 1) Administration for Children and Families (ACF) should work with tribes to improve their current CFSP and APSR program instructions, as well as their internal administrative procedures regarding monitoring of ICWA compliance; 2) states should focus their efforts on meeting ACF requirements, collaborating within and between states and tribes on "best practices," and performing internal ICWA compliance studies; 3) tribes should familiarize themselves on IV-B requirements and insist on participating with states in collaboration and effective consultation specifically associated with ICWA and IV-B; and 4) legislative reform should be enacted to require mandatory field examinations by ACF and to include a sanctioning process for states not meeting ICWA reporting requirements.

Recommendation One:

ACF should work with tribes to improve their current CFSP and APSR program instructions, as well as their internal administrative procedures regarding monitoring of ICWA compliance.

ACF program instructions should include consistent and mandatory reporting requirements. The instructions should also contain empirically verifiable outcome measures for monitoring ICWA compliance. Finally, the program instructions should address all of the five major areas of ICWA as defined by ACF and should be developed with tribal involvement. This would involve ensuring that all state CFSPs and APSRs are carefully reviewed and evaluated.

Program Instructions

ACF should begin by developing and maintaining consistent and detailed ICWA program instructions. ACF's initial Title IV-B ICWA program instructions issued in 1995 were a step in this direction. The 1995 program instructions required states to provide a description of their philosophy and vision for consulting with tribes on ICWA and to detail the Indian populations within their

respective states. The 1995 program instructions also required states to document tribal concerns and offered suggestions on numerous activities states could undertake to achieve greater ICWA compliance.

Rather than add greater detail and specificity to the 1995 program instructions, ACF rescinded them in favor of the 1999 program instructions. The 1999 ACF program instructions are notable primarily because of their brevity. To its credit, ACF improved its 2000 program instructions by returning some of the language of the 1995 instructions, including offering additional optional or suggested activities states should incorporate into their CFSPs and APSRs again.

To further improve its program instructions, ACF should restore the language of the 1995 program instructions in their entirety, while incorporating the requirements of 1999 and the language of 2000. ACF should then make program instructions even more comprehensive in addressing ICWA's major requirements. This would include converting the suggested or optional activities offered in the 2000 program instructions into requirements. For example, with regard to consultation, ACF program instructions should require annual face-to-face meetings between tribes and states with high-level leaders of both groups participating. ACF should also define high-level leaders in their program instructions to include, at a minimum, child welfare directors from both tribe(s) and states. Currently, ACF only "suggests" that face-to-face meetings be held with "high" level leaders with no other defining criteria.

To further improve the comprehensiveness of its program instructions, ACF should require states to report their progress with ICWA compliance using empirically verifiable outcome measures. For example, with regard to Indian caregiver preference for out-of-home placements, ACF could require states to report on the number of Indian foster and adoptive homes registered before and after they implement the measures for recruitment detailed in their CFSPs. Within their APSRs, states would then be required to report on the number of Indian foster and adoptive homes available after the specific measures were implemented. The increase in the number of available Indian foster and adoptive homes would then serve as a measure of states' success in their efforts to promote ICWA compliance. Progress could then be evaluated annually to determine which activities are most successful in improving state ICWA compliance.

In its program instructions, ACF should also include requirements that address all five of the major components of ICWA (see pages 15–16). Currently, ACF addresses only specific measures relating to the identification of Indian children,

notification to the tribe, and Indian caregiver preferences. ACF should then expand its instructions to include other important components of ICWA (e.g., evidentiary standards in court proceedings, use of experts in tribal culture as witnesses, etc.).

Internal ACF Procedures

In addition to improving program instructions, reform of ACF internal procedures would assist in improving state ICWA compliance. One ACF administrator who was interviewed revealed that the ACF does not carefully review every CFSP and APSR submitted. Clearly, this makes it difficult for ACF to monitor each state's ICWA compliance activities. However, for the Title IV-B reporting process to be meaningful, ACF administrators must coordinate their resources to ensure that every plan is read and evaluated with regard to ICWA compliance. ACF must ensure that a monitoring process or mechanism is in place to enforce the mandates of the Title IV-B statute. Without this monitoring process, deficiencies in ICWA compliance procedures will go unchecked, and compliance will not improve nor will monetary sanctions be carried out.

It would also be helpful for ACF to conduct its own research to determine if the reporting submitted on the specific measures of states to comply with ICWA is accurate. This would involve field examinations of state ICWA compliance procedures to determine their effectiveness. This research could be done by ACF or through a grant process that allows third party research to evaluate compliance efforts.

Tribal Involvement

In developing more effective program instructions and internal procedures, it is important that ACF include tribes in the process. Tribes offer a unique perspective to ACF in that they are the groups adversely affected by the failure of states to comply with ICWA. Tribes can provide feedback on how effective states are in implementing the ICWA compliance measures detailed in their CFSPs and APSRs. Tribes can also assist ACF in its oversight function, providing information on whether states are genuinely implementing the measures described in the plans and progress reports. The Bureau of Indian Affairs (BIA) and organizations such as the National Indian Child Welfare Association (NICWA) or National Congress of American Indians (NCAI) could serve as tribal representatives in this process.

Recommendation Two:

States should focus their efforts on meeting ACF requirements, collaborating within and between states and tribes on "best practices," and performing internal ICWA compliance studies.

Based upon the overall analysis, it appears that a

majority of states are either not in compliance with ICWA and are not following ACF's guidelines or may have specific measures in place to comply with ICWA (or at least various components) but did not report on them in their respective CFSP/APSR. In any event, states made limited efforts toward developing and updating the ICWA sections of their CFSPs/APSRs. Additionally, over half of all state CFSPs and APSRs did not directly respond to all of ACF's minimal guidelines; therefore, it was difficult to determine what steps they were taking to comply with any of ICWA's mandates. Therefore, states should focus their efforts more on meeting ACF requirements by collaborating within and between states and tribes on "best practices" and performing internal ICWA compliance studies.

States Must Comply with ICWA

As states develop and update CFSPs, it is imperative that they detail all steps taken to comply with ICWA. States with both a significant number of American Indians and a traditionally good working relationship with tribes must include what has been or is currently being done to comply with all of ICWA's mandates. Additionally, states that do not have a strong American Indian presence, because of the absence of federally recognized tribes in the state, a small Indian population, or a changeover in personnel, must make a stronger effort to establish a working precedents for complying with ICWA. One example would be to develop, as other states have, a department-wide policy and procedures manual to guide child welfare workers in ICWA procedures. Developing this manual would give child welfare workers and state personnel a reference tool for training future employees, thus decreasing the chances of inconsistent ICWA compliance.

Consultation

The second recommendation for states focuses on the need for better collaboration between tribes, state departments, and various states. Many states report having ICWA liaisons and/or specialists (see Figure 5), and it is vital that the state include this individual in all aspects of developing, writing, and monitoring relevant components of CFSPs/APSRs. This individual should be consulting with tribes and/or tribal organizations and coordinating meetings between state and high-level tribal officials aimed at improving state ICWA compliance. States that have ICWA liaisons and/or specialists need to actively support the initiation of consultation and ongoing collaboration with tribes and ICWA workers from other states. For states that currently do not have an ICWA liaison and/or specialist, we would strongly recommend the creation of this position and/or the involvement of local urban Indian organizations or centers to ensure ICWA compliance.

Additionally, a regional or multi-regional "best practices" conference should be developed and

promoted. This conference would bring together tribal, state, regional, and federal officials involved in ICWA compliance and other relevant components of the IV-B planning process. Topics of the conference could include, but are not limited to, accessing training and technical assistance opportunities on ICWA compliance; developing and updating CFSPs/APSRs; initiating consultation with tribes and/or tribal organizations; and developing practices for the monitoring of state ICWA compliance.

Compliance Studies

The final recommendation for states is to work with tribes to perform internal ICWA compliance studies on an ongoing basis. For example, states with large Indian populations could take a representative sample of all Indian child welfare cases and examine them across relevant ICWA components. In states with small Indian populations, compliance studies would involve all Indian child welfare cases. Both types of studies should be done with tribal involvement to promote better relations and to assist states in meeting tribal needs and federal requirements. It should be noted that state ICWA compliance model instruments have been developed and will be tested in Arizona in the second year of this study. States could therefore use these instruments or develop their own as part of their ongoing compliance studies.

Appendix F contains examples of states that included all of the specific measures required by ACF within their progress reports. The description was included to give recognition to states that invested effort in writing their plans and to provide an example for other states as it relates to writing IV-B plans and progress reports.

Recommendation Three:

Tribes should familiarize themselves on IV-B requirements and insist on participating with states in collaboration and effective consultation specifically associated with ICWA and IV-B.

Although ICWA is a federal law, many states have not done an effective job in ensuring it is followed. Therefore, it is important for tribes to become involved with the state in facilitating the creation of better ICWA compliance measures. As discussed in a previous study (Brown et al., 2000), it appears the collaboration process is almost always initiated by tribes rather than by states. Consequently, it is important that tribal representatives familiarize themselves with the requirements of IV-B and ICWA so that tribes can play a role in the compliance process.

Tribal Involvement

Tribes need to be aware that IV-B requires states to consult with them on state ICWA compliance measures. In short, tribes have a legal right to be

heard. Furthermore, as states and ACF have generally not done an effective job in taking measures to promote ICWA, tribes must exercise this right and be active in pursuing state compliance. Therefore, tribes are encouraged to initiate contact with their respective states and insist they be involved in all aspects of developing, writing, and monitoring the ICWA section of CFSPs/APSRs. Tribes need to be represented at the discussion table in order to ensure input from all affected parties. A tribal representative should be assigned the responsibility of initiating this collaborative contact with state personnel in charge of overseeing the ICWA section of state plans. This individual should act as a consultant on the state CFSP/APSR development, and, just as importantly, monitor and follow up on the state's goals and objectives. In states where more than one tribe resides, it is important that all tribes make sure their voices are heard. Alternatively, in states with no federally recognized tribes, it becomes the responsibility of the local urban Indian organization or center to initiate contact and follow-up.

Understanding Options

Another recommendation for tribes centers on understanding all their available options with regard to policy and regulations. Often, tribes are not invited and/or do not involve themselves in the policymaking and debate process. Therefore, tribes should insist on consultation with the state and regional ACF office, specifically focusing on how best to work together to promote important policy, rules, and regulations that positively affect Indian children. Tribes should also consult with other tribes who have had success in their dealings with state and ACF officials for guidance in developing a positive working relationship with both groups. In the past, tribes were often not notified or were unaware of directions or instructions given to states from regional and federal offices. Therefore, if tribes are to be updated and knowledgeable about their options, better communication efforts need to be established and maintained.

Recommendation Four:

Legislative reform should be enacted to require mandatory field examinations by ACF and to include a sanctioning process for states not meeting ICWA reporting requirements.

Legislative reform should be enacted to require ACF to conduct field examinations to evaluate state ICWA compliance procedures. The Title IV-B statute should also be amended to strengthen the sanctioning process for states out of compliance with the ICWA reporting requirements.

Required Monitoring

As detailed in Recommendation One, greater requirements by ACF would undoubtedly improve state ICWA compliance. However, to ensure more effective ICWA compliance efforts by states, legislation should be amended to require ACF to perform mandatory monitoring of the major ICWA requirements to evaluate the state compliance procedures reported in CFSPs and APSRs. This would occur through field examinations of state compliance procedures. Mandatory monitoring would assist in ensuring that the specific measures reported in state CFSPs and APSRs were being effectively implemented in practice.

Sanctions

The Title IV-B statute should be amended to include a sanctioning process for states not meeting ICWA reporting requirements. Currently, if states do not take specific measures to ensure ICWA compliance, the federal government may withhold Title IV-B funds. For the ICWA compliance process to be implemented more effectively, legislation may be necessary to include this sanctioning process in greater detail to emphasize the importance of ICWA compliance. When Title IV of the Social Security Act was passed, Part A included penalty provisions (42 U.S.C. § 609) for states that did not meet IV-A requirements. No such penalty provisions were included in IV-B, Subpart 1. Therefore, legislation should include a similar penalty provision in IV-B, Subpart 1. This would ensure that ICWA compliance activities reported in CFSPs/APSRs are being taken seriously and monitoring mechanisms are in place. As an additional form of oversight, the Title IV-B statute should also be amended to provide a means for tribes to formally appeal to ACF if states are not working toward accomplishing the goals and objectives set forth in their respective plans.

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APPENDIX A

Title IV-B Child and Family Services Plan/Annual Progress Services Report Content Analysis Survey Instrument

5-year CFSP/APSR ICWA Instrument

Instructions:

Please complete the entire survey instrument for a content analysis of state IV-B Child and Family Services plans and Annual Progress and Services Reports. The instrument contains a total of six questions designed to illicit information from the contents of IV-B plans to determine if the reviewed plans meet the requirements of federal law.

Date:_____

State IV-B Plan: _____

_____ 1999 CFSP _____ 2000 APSR

	Yes	No	Not Applicable	
1.	____	____	____	Is there evidence in the document that the state has consulted with any Indian tribes or tribal organizations in the state? If yes, is there mention of the tribes or tribal organizations consulted? Please specify:
				If yes, is there also evidence in the document that Administration for Children and Families (ACF) Guidelines were followed in the consultation process?
	____	____	____	a. "High" level leaders, officials, or managers from both state and tribe were consulted in a manner reflective of a government to government relationship between the two? Please specify:
	____	____	____	CAN'T DETERMINE b. Was there a face to face meeting?
	____	____	____	c. In states with no federally recognized tribes, were meetings conducted with other groups such as urban Indian organizations or national Indian organizations? Please specify:

_____ _____ _____ d. Is there any evidence in the document that discussions were held during an existing forum or was a forum created specifically for IV-B planning purposes? If yes, please specify which:

Please list any or all other collaboration/trust building/communication activities between the state and tribe(s)/tribal organizations?

2. Is there evidence in the document that the state developed any of the following "specific measures" to ensure ICWA compliance:

A. "Specific measures" required at minimum by ACF Guidelines to meet § 422 (b)(11):

	Yes	No	
2a.	_____	_____	Identification of an Indian child
2b.	_____	_____	Notification of Indian child to relevant tribe
2c.	_____	_____	Measures that give preference to Indian caregivers when determining out-of-home or permanent placements for Indian children
	Yes	No	
	_____	_____	If yes, is there any mention of procedures to ensure Indian caregivers meet all relevant child protection standards?

B. "Specific measures" suggested by ACF Guidelines to meet § 422 (b)(11):

2f. _____ _____ Is there reference in the document to any types of training provisions to ensure state compliance with ICWA? If yes, please specify:

2g. _____ _____ Development of state caseworker compliance expectations/measures

2h. Is there reference in the document to the development or existence of any of the following partnership agreements between the State and Tribes or Tribal organizations:

	Yes	No	
a.	_____	_____	Memorandum of Agreement/Understanding (MOA/MOU)
b.	_____	_____	Intergovernmental Agreement (IGA)
c.	_____	_____	Working Agreement(s)
d.	_____	_____	Other: (please specify)

If agreement(s) are mentioned, which parties have entered into these agreements? (e.g., state/tribe, county/tribe, etc.)

2i. _____ _____ Reference to or inclusion of culturally competent or culturally appropriate standards for foster care licensing? If yes, please specify:

2j. Are any of the following recruitment efforts mentioned in the document:

	Yes	No	
a.	_____	_____	Recruitment of Indian foster homes
b.	_____	_____	Recruitment or promotion of relative placement (kinship) of Indian children
c.	_____	_____	Recognition and use of tribal licensed foster homes for placement of Indian children
d.	_____	_____	Other recruitment efforts: (please specify):

	Yes	No	Not Applicable	
3.	_____	_____	_____	Is there evidence in the document that specific policies, procedures, or protocol are or will be in place to ensure compliance with ICWA? If yes, what specific policies, procedures, or protocol are mentioned?
4.	_____	_____	_____	Is there evidence in the document that technical assistance or computer support is being supplied by the state to the tribe/tribal organization? If yes, what types of technical assistance or computer support is mentioned?

	Yes	No	Not Applicable	
5.	_____	_____	_____	Is there evidence in the document of specific resources or funding allocated for ICWA compliance? If yes, please specify:
6.	_____	_____	_____	Is there evidence in the plan regarding the creation or existence of a new position/program specifically associated with ICWA?

If yes, is there mention of one or more of the following: (check all that apply)

_____ Creation of a new ICWA staff position

_____ Current existence of an ICWA staff position

_____ Creation of a new ICWA program

_____ Current existence of an ICWA program

_____ Creation of a planning committee

_____ Current existence of a planning committee

_____ Other: (please specify)

If any of the above were included within the plan, please specify the responsibilities of the new or existing position/program below:

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APPENDIX B

Title IV-B Survey Instrument and Telephone Survey

Title IV-B Regional HHS/ACF Administrator Telephone Survey

Name:_____

Region:_____

Occupational Title:_____

Phone Number:_____

Mailing Address:_____

_____

_____

1) Yes No

____ ____ Have you reviewed the ICWA portion(s) of the Title IV-B Child and Family Services Plan(s) in your region?

2) Yes No

____ ____ Have you reviewed the ICWA portion(s) of the Title IV-B Annual Progress and Services Report(s) in your region?

3) Yes No

____ ____ Do you provide any type of feedback/suggestions to states regarding the quality of the ICWA sections within their CFSP/Progress Reports? If yes, please specify:

4) Yes No

____ ____ Are/will these plans be used to assist states in complying with ICWA?

If yes, please specify how the plans are/will be used:

5) Yes No

____ ____ Are/will the CFSPs/APSRs be used in the development of the statewide assessment in the Child and Family Services Reviews? If yes, please specify:

6) To the best of your knowledge, how were the 1999 CFSP program instructions (March 25, 1999) relating to ICWA developed?

7) To the best of your knowledge, how were the 2000 APSR program instructions (April 18, 2000) relating to ICWA developed?

8) After reviewing the ICWA sections of state plans/progress reports, how would you rate their overall quality as it relates to meeting federal reporting requirements?

Excellent (well above minimum requirements).....4

Good (slightly above minimum requirements).....3

Satisfactory (meets minimum requirements).....2

Poor (below minimum requirements) 1

Comments:

Thank you!

APPENDIX C

1995 Child and Family Services Plan Administration for Children and Families Program Instructions

ACYF-cB-PI-95-l2 issued 8/11/95 http://www.acf.dhhs.gov/programs/cb/laws/pi/pi9512.htm

Laws/Policies

PLEASE NOTE: This policy issuance has been withdrawn in its entirety and should be used only for historical or reference purposes.

ACF Administration for Children and Families	**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES** **Administration for Children, Youth and Families**
	1.Log No. ACYF-CB-PI-95-12 / 2.Issuance Date: (08/11/95)
	3. Originating Office: Children's Bureau
	4. Key Words: Indian Child Welfare Act

To: State Agencies and Indian Tribes Administering the Indian Child Welfare Act.

Related Laws and Regulations: P. L. 95–608 Indian Child Welfare Act of 1978; 25 CFR Ch.1, Part 23 Subparts A and B -Indian Child Welfare Act; P. L. 93-638, Indian self-determination and Education Assistance Act.

Overview: Public Law (P. L.) 103–432 requires States to report on measures taken to comply with the Indian Child Welfare Act in their title IV-B Plans beginning Federal Fiscal Year (FY) 1996 (October 1, 1995 to September 30, 1996).

Background: In 1978, the Federal Indian Child Welfare Act (ICWA) was passed. Under the Act, Indian Tribes were granted extensive jurisdiction in child welfare cases involving Indian children, recognizing "that there is no resource that is more vital to the continued existence and integrity of Indian Tribes than their children." The Act "established minimum standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture." States are required to comply with this law in their child welfare practices. Many States have policies and procedures which address the specific elements laid out in the legislation. However, there were no federal requirements for State reporting on ICWA compliance in either the legislation or subsequent regulations.

In October 1994, P.L. 103-432 (H.R. 5252) was passed, which amended the Social Security Act. This

change in the law requires that States, in consultation with Tribes and Tribal organizations, include compliance with the Indian Child Welfare Act in the State title IV-B Subpart 1 Child Welfare Services plan.

Required Actions:

For the Federal fiscal years beginning on and after October 1, 1995, each State submitting a title IV-B subpart1 plan must include a section which addresses specific measures the State will take to comply with the ICWA for the FY addressed by the title IV-B Subpart 1 plan. P.L. 103-432 specifically indicates that this section of the plan must be developed in consultation with the Tribes and Tribal organizations. (Tribal organizations are defined in Section 4 of P.L. 93-638, the Indian self-determination and Education Assistance Act).

For FY 1996 (October 1, 1995 through September 30, 1996) States must develop a "plan-to-plan" which includes a description of the consultation process that will be used with the Tribes. If, however, a State title IV-B Subpart 1 plan has already been submitted (either alone or in conjunction with the State title IV-B Subpart 2 plan), States may choose to amend their plan with the required goals and activities. Amendments are due no later than 60 days following receipt of this issuance.

In subsequent State title IV-B plan annual updates, States must describe future goals and activities they will undertake to improve compliance with IGWA.

Consultation with Tribes:

A central element of the legislation is that the States' actions must be developed "after consultation with Tribal organizations." Tribes and Tribal organizations determine who speaks for them. The nature of the State/Tribal relationship should be reflected in appropriate persons of authority (high-level leaders, officials or managers) from both the State and Tribe participating in consultations/meetings. A face-to-face contact with Tribes and Tribal organizations, providing an opportunity for everyone to speak, is seen as an optimal format. Existing forums for State/Tribal discussion may be used to meet this requirement. Flexibility must be allowed to meet individual situations.

In those States were there are no Federally recognized Tribes, other resources such as urban Indian organizations and national Indian organizations should be consulted.

Plan:

The States must make an overall statement of their approach to working with Tribes and Tribal organizations, including their philosophy and vision for this process. The pan should contain a description of the Indian population of the State, and their location(s) within the State (including on or near reservations as well as in urban areas). The plan must also contain a description of the consultation process used with all of the Tribes and Tribal organizations in the State, as well as procedures for addressing cases involving children from out-of-State Tribes. It must indicate all areas of concern that are raised by the Tribes and tribal organizations during this process, even though the plan may not address all the issues during that

year. The purpose of this is to document the concerns and problems that are raised. Memoranda of Understanding may be used as a method to document any understandings, agreements, or unresolved issues.

Through the Joint Planning process, the ACF Regional Offices and the States will prioritize and address the areas that are of major concern to the Tribes, Tribal organizations and the States.

The expectation is that over time the States will improve their compliance with the ICWA requirements by establishing and accomplishing appropriate goals in consultation with the Tribes.

The major ICWA requirements are listed below to provide a clear understanding of what the law requires.

1. Identification of Indian children by the State child welfare services agency (P.L. 95-608 Sec. 4(4)).
2. Indian parents and Tribes have the right to notice of and to intervene in State proceedings involving Indian children (Sec. 102(a), Sec. 103(a)).
3. Special preference for placement of Indian children with: (1) a member of the child's extended family, (2) other members of the Indian child's Tribe, or (3) other Indian families and as specified by Sec. 105(b).
4. Active efforts to prevent the breakup of the Indian family (Sec. 102(d)), including use of Tribal community services and culturally appropriate programs.
5. Use of Tribal courts in child welfare matters. Tribal rights to intervene in State proceedings, or transfer the proceedings to the jurisdiction of the Tribe (Sec. 101(a), (b) & (c).

In developing this program instruction, dialogue with the Tribes and States revealed several suggested activities that would be helpful in achieving State compliance with ICWA. Optional areas that States may choose to address in their title IV-B Subpart 1 plan include: training programs about ICWA for State employees; development of State caseworker compliance expectations or measures; and State partnership agreements with Tribes and Tribal organizations, for example, Tribal-State agreements on training.

Other suggested activities include: developing culturally appropriate standards for American Indian foster home licensing, recruiting of Indian foster homes, promotion of relative placement of Indian children, and recognition and use of tribal licensed foster homes for placement of Indian children.

APPENDIX D

1999 Child and Family Services Plan Administration for Children and Families Program Instructions

ACYF-CB-PI-9-07 http://www.acf.dhhs.gov/programs/cbnaws/pi/pi9907.htm

Laws/Policies

ACF **Administration for Children and Families**	**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES** **Administration for Children, Youth and Families**
	1.Log No.: ACYF-CB-PI-99-07 / 2.Issuance Date: March 25, 1999
	3. Originating Office: Children's Bureau
	4. Key Words: Title IV-B Child and Family Services State Plan; CAPTA State Plan; ILP

PROGRAM INSTRUCTION

TO: State Agencies, Indian Tribes, Indian Tribal Organizations Territories and Insular Areas Administering or Supervising the Administration of Title IV-B, subparts 1 and 2, or subpart 2 only, of the Social Security Act, Title IV-E of the Social Security Act; and State Office or Organization Designated by the Governor to Apply for Child Abuse and Neglect State Grant Funds.

SUBJECT: June 30, 1999 Submission of: (1) the Child and Family Services Plan Final Report required for title IV-B of the Social Security Act (the Act); (2) the Fiscal Year 2000–2004 Child and Family Services Plan; (3) the CFS-1 01, Annual Budget Request and Annual Summary of Child and Family Services; (4) the Child Abuse and Neglect State Plan; and (5) the application for the Independent Living program (optional).

LEGAL AND RELATED REFERENCES: Title IV-B, subparts 1 and 2 and Title IV-E, Section 477 of the Act; Section 106 of the Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5101 et seq.); Adoption and Safe Families Act of 1997 (Public Law 105–89); 45 CFR 1357; ACYF-PI-93-16, December 10, 1993, Independent Living Program; ACYF-PI-CB-95-12, August 11, 1995, Indian Child Welfare Act; ACYF-PI-CB-95-23, October 11, 1995, Multiethnic Placement Act (Diligent recruitment only); and ACYF-PI-CB-98-05, April 28, 1998, Title IV-B, subparts 1 and 2, State Plan Assurances.

PURPOSE: This Program Instruction (PI) provides guidance to States and eligible Indian Tribes on actions they are required to take in order to receive their allotments for fiscal year 2000 (subject to the availability of appropriations) authorized under title IV-B, subparts 1 and/or 2, and for States only, the Child Abuse Prevention and Treatment Act (CAPTA). It also affords States an opportunity to apply for FY 2000 funds for the Independent Living Program. In order to receive funds for fiscal year 2000, State and Indian Tribal actions will involve developing and submitting, by June 30, 1999:

- A final report for fiscal years 1995-1999 on services provided under the CFSP and CAPT A State plans;
- A five-year Child and Family Services Plan for fiscal years 2000-2004 for title IV-B, subparts 1 and/or 2, including the title IV-B State plan requirements mandated by the Adoption and Safe Families Act of 1997 (P. L. 105-89), and for States a five-year CAPTA State Plan; and
- The CFS-101 for title IV-B, subparts 1 and 2, and for States only, CAPTA, for FY 2000.

BACKGROUND:

Child and Family Services Plan

The Federal regulation at 45 CFR 1357 applies to State and Indian Tribes receiving funds under title IV-B, subparts 1 and/or 2. It includes the requirements for a five-year comprehensive Child and Family Services Plan (CFSP), annual updates, and a final report on the progress made toward accomplishing the goals and objectives in the CFSP. Paragraph (e) of 45 CFR 1357.16 requires that in Fiscal Year (FY) 1999, States and eligible Indian Tribes conduct a final review of the progress made toward accomplishing the goals and objectives in the CFSP for FYs 1995-1999. On the basis of the final review, States and eligible Indian Tribes must prepare a final report and submit the report to ACF. Paragraph (f) of 45 CFR 1357.16 requires States and eligible Indian Tribes to prepare a new five-year CFSP that is based on the final review and the requirements in 45 CFR 1357.15.

Since the submission of the first five year CFSP, the Adoption and Safe Families Act (ASFA) of 1997 was signed into law on November 19,1997. Among other things, ASFA amended title IV-B, subparts 1 and 2 by:

- adding new assurances to the State plan under title IV-B, subparts 1 and 2 (sections 422(b)(12) and 432(a)(9));
- emphasizing safety in the delivery of services in sections 422(b)(B)(iii), (iv) and section 431 (a)(1)(2) of the Act;
- defining "non-Federal" funds (section 431 (a)(9);
- adding two new services (time-limited family reunification services, and adoption promotion and support services) under title IV-B, subpart 2 (sections 431 (a)(7) and (8)) (see ACYF-CB-PI-98-03, March 3, 1998); and,
- requiring a significant portion of funds be spent on all four services under title IV-B, Subpart 2.

Child Abuse Prevention and Treatment Act State Plan (States only)

Section 106(b)(1)(A) of CAPTA requires the submission of a State program plan every five years. This plan is to be used for the support and improvement of State child protective services (CPS) systems in one or more of the nine program areas set forth in section 106(a) of CAPTA. Section 106(b)(2)(A) further requires an assurance (in the form of a certification by the Governor of the State) that the State has in effect and is

enforcing a State law, or has in effect and is operating a statewide program, relating to several areas of child abuse and neglect.

In order to help States to plan comprehensively for the full array of child welfare services, from prevention and protection through permanency, we have consolidated the CFSP and the CAPTA plans. In addition, such consolidation reduces duplicative information requirements for the CFSP and the CAPTA plans. (See also ACYF-NCCAN-PI-97-01, March 12, 1997 and ACYF-CB-PI-97 -03, May 16,1997.)

Compliance with the eligibility requirements for a CAPTA State plan is a prerequisite for eligibility for funds under the Children's Justice Act State Grant Program authorized by Section 107(a) of CAPTA.

Independent Living Program (ILP) (States only)

In addition to meeting the requirements of title IV-B, subparts 1 and 2, States must include in their CFSP information on the ILP under title IV-E of the Social Security Act (see section 1357.15(a)(2)(I)). States may consolidate the ILP application into the title IV-B CFSP and still meet the requirement in 45 CFR 1357.16(a)(4). By doing so, States can receive their ILP funds earlier in the fiscal year.

Although consolidation of the ILP application into the title IV-B planning process is encouraged, pooled funding among the programs is not allowed, since separate funding streams and accountability are still required by statute. While the information on the two programs may be consolidated into one plan, eligibility and funding for the individual programs will be kept separate and funding will not be delayed for one program due to potential eligibility issues in the their program.

INSTRUCTION: This section describes the requirements States and eligible Indian Tribes must meet to receive their title IV-B and CAPTA (States only) allotments for FY 2000. The final report, the FY 2000–2004 CFSP, and the CFS-101 for FY 2000 must be submitted to ACF by June 30,1999. The Final Report and the five-year CFSP should meet the requirements of 45 CFR 1357 and title IV-B, subparts 1 and 2 of the Act. The following sections provide additional guidance as a result of either previous Children's Bureau issuances or due to changes in title IV-B resulting from ASFA.

A. A. Final Report for Fiscal Years 1995-1999 for the CFSP and CAPTA State Plans

1. The final report may be submitted in the format of the State's or Indian Tribe's choice. (Insular Areas that submitted a CFSP should also submit a final report on their CFSP.) ACYF-CB-PI-9-07
2. Each State and each Indian Tribe must conduct a review of the progress made toward accomplishing the goals and objectives in the CFSP. When conducting the final review, the State and the Indian Tribe must involve the agencies, organizations, and individuals that are a part of the on going CFSP-related consultation and coordination process. The final report must include the progress made on the goals and objectives for FY 1995 through FY 1999.

Indian Tribes that became eligible for title IV-B, subpart 2, funds after June 30, 1995, are to submit a final report for the years covered by their CFSP.

3. The final report must include, at a minimum:

a. A description of the specific accomplishments and progress made toward meeting each goal and objective in the State's and Indian Tribe's CFSP, including information on outcomes for children and families, and a more comprehensive, coordinated, effective child and family services continuum. In describing the accomplishments and progress in the final report, States and Indian Tribes should incorporate their initial baseline data and information, as well as that data and information gathered in subsequent annual reviews. In developing the final report the State or Indian Tribe should address barriers, unexpected events, etc. that impacted their accomplishment of the goals and objectives.

b. A description of the progress made in the areas of training, technical assistance, research, evaluation, or management information systems in support of the goals and objectives in the CFSP.

c. A description of the progress and accomplishments made with regard to the diligent recruitment of potential foster and adoptive families that reflects the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed.

d. CAPTA information:

   i. Accomplishments to date under the CAPTA portion of the consolidated CFSP.

   ii. States that did not meet the assurance requirements set forth under sections 106(b)(2)(A)(l)(xiii), 106(b)(2)(B) and 106(b)(2)(d) of CAPTA, but certified they would meet them by October 3, 1998 or June 30, 1999, need to provide information whether they have met the outstanding requirements. If the State is not in complete compliance, what was done to come into compliance, why was compliance not achieved, and what actions are being taken to try to meet the outstanding requirements?

   iii. States with established citizen review panels, submit a copy of the annual report(s) from the citizen review panels. Section 106(d) of CAPTA requires that the citizen review panels develop annual reports and make them available to the public. The report should include, at a minimum, a summary of the panel's activities, the recommendations of the panel based upon its activities and findings, and include information on the progress States are making in implementing the recommendations of the panels.

e. For States operating a child welfare demonstration project under section 1130 of the Social Security Act (the Act), a description of the accomplishments and progress in the demonstration project as they relate to the goals and objectives in the State's CFSP.

f. Provide information in the final report on the status of implementing the transition rules as they apply to "new" and "current" children in foster care as described in PI ACYF-CB-PI-98-14, August 20,1998.

g. Any other information the State or the Indian Tribe wishes to include.

B. B. Five-year Child and Family Services Plan

1. Title IV-B, subparts 1 and 2, Child Welfare Services and Promoting Safe and Stable Families; 45 CFR 1357.15

Development of the CFSP provides an opportunity to lay the groundwork for a system of coordinated, integrated, culturally relevant family-focused services. States and Indian Tribes should keep in mind the requirements of ASFA as they plan for the full continuum of child welfare services in the new CFSP. Additionally, the CFSP should be developed reflecting the service principles at 45 CFR 1355.25. We especially encourage States to work toward preventing and eliminating discrimination in the placement of children for adoption and foster care on the basis of race, color or national origin. The process of coordination and collaboration implemented during the previous plan development, and continued annually for the Annual Progress and Services Report (APSR), should be continued in the development of the CFSP for FYs 2000–2004. The initial baseline information, as updated in each APSR, should serve as a basis for the development of the State's and Indian Tribe's CFSP vision, goals, objectives, funding, and service decisions.

As State and Indian Tribal staff develop the CFSP to meet the requirements in 45 CFR 1357, they must apply each section of this regulation to the two new services under title IV-B, subpart 2. The only paragraph not applicable to the new services is 45 CFR 1357.15(r). This paragraph is applicable only to family support services.

In addition to the requirements of 45 CFR 1357 and title IV-B, subparts 1 and/or 2, the following must also be incorporated into the CFSP. These requirements apply to States and Indian Tribes applying for funds for one or both subparts of title IV-B, unless otherwise noted.

a. The development of the CFSP for FYs 2000-2004 must be based on information in the final report, and meet the requirements in 45 CFR 1357. The CFSP must include information on:

- Child Welfare Services
- Family Support
- Family Preservation
- Time -Limited Family Reunification Services
- Adoption Promotion and Support Services
- Child Abuse Prevention and Treatment Act (CAPTA) Services
- The Independent Living Program (ILP)
- Child Welfare Demonstrations approved under section 1130 of the Act, as appropriate.

b. Services in relation to permanency planning, 45 CFR 1357.15(q). For States and Indian Tribes administering both title IV-B programs (subparts 1 and 2), or title IV-B, Subpart 1 only, the CFSP must explain how these services (e.g., preplacement preventive services, time-limited family reunifi-

cation services, independent living services) will help meet the permanency provisions for children and families in sections 422(b)(10) and 471 of the Act and meet the provisions for promoting safe and stable families in section 432(a). For additional information and guidance refer to ACYF-PI-CB-98-05, April 28, 1998 (Attachment G).

c. States and Indian Tribes are to submit the assurances listed in 45 CFR 1357.15(c) and the two new assurances added to title IV-B (sections 422(b)(12) and 432(a)(9)). A form is attached listing these assurances, States and Indian Tribes may sign Attachment A and submit it with the CFSP or include them as part of the CFSP narrative.

d. In addition to the information in 45 CFR 1357.15, States and Indian Tribes (if applicable), must provide the following information in the CFSP:

   i. States and Indian Tribes must collect and analyze State/Tribal-wide information on time-limited family reunification services and adoption promotion and support services currently available to families and children; the extent to which each service is available and being provided in different geographic areas and to different types of families; and important gaps in service, including mismatches between available services and family needs as identified through baseline data and the consultation process.

   ii. Significant portion of funds used for title IV-B, subpart 2, Promoting Safe and Stable Families (45 CFR 1357.15(s)) (States only). For the purpose of applying for FY 2000 funds, States must indicate the specific percentages of title IV-B, subpart 2 funds that the State will expend on actual service delivery of family preservation, community-based family support, time-limited family reunification and adoption promotion and support services, as well as planning and service coordination, with a rationale for the decision. The State must have an especially strong rationale if the percentage provided is below 20% for anyone of the four service categories. The amount allocated to each of the service categories should only include funds for service delivery. States should report separately the amount to be allocated to planning and service coordination. (See ACYF-PI-CB-98-03, March 5, 1998).

   iii. Diligent recruitment. The State and Indian Tribe must provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State/Tribe for whom foster and adoptive homes are needed. (See section 422(b)(9).) This applies to States and Indian Tribes applying for title IV-B, Subpart 1, funds.

   iv. Indian Child Welfare Act (States only). The State must provide a description, developed in consultation with Indian Tribes in the State, of the specific measures to be taken by the State to comply with the Indian Child Welfare Act. These measures must, at a minimum, provide for the identification of Indian children, notification of such to the relevant Indian Tribe, and for giving preference to Indian caregivers when determining out-of-home or permanent placements for Indian children, provided that the Indian caregivers meet all relevant child protection standards. (See section 422(b)(11).)

v. Cross-jurisdictional resources. The CFSP must contain assurances that the State and Indian Tribes shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. (See section 422(b)(12).) This applies to States and Indian Tribes applying for title IV-B, Subpart 1, funds.

vi. Child welfare demonstrations activities (States only). The State will provide a description of the coordination efforts to integrate the activities under the CFSP with the goals and objectives of the demonstration, where applicable. In particular, the State will discuss how title IV-B monies are used to maximize the use of flexible title IV-E dollars in the demonstration.

vii. For those States receiving an adoption incentive payment, specify the services that have been, or will be, provided to children and families with the adoption incentive funds.

viii. Describe the capacity of the State child welfare agency and the State judicial system to implement and meet the requirement to file a petition to terminate the parental rights of the child's parents, if the exclusions do not apply, when a child has been in foster care for 15 of the most recent 22 months.

e. The Federal regulation at 45 CFR 1357.32(f) (maintenance of effort) uses the States' 1992 fiscal year as the base year for determining maintenance of effort. For purposes of this PI, the base year will remain the same for all four service areas under title IV-B, subpart 2.

f. The Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands may submit consolidated grant applications in accordance with 45 CFR Part 97. These jurisdictions need not submit an application under this Program Instruction but may choose to have their title IV-B, subparts 1 and/or 2, allotments included in a consolidated grant and expend these funds under authority of another program that is available for consolidation. If the Insular Areas choose to consolidate their application for title IV-B, subparts 1 and/or 2, they must notify their ACF Regional Office in writing of their intent by June 30, 1999.

Insular Areas that choose to submit a CFSP may do so and submit the plan to their ACF Regional Office by June 30, 1999.

2. Child Abuse Prevention and Treatment Act State Plan (States only)

States must develop a five-year plan for improvement of their CPS system and consolidate it with their CFSP in order to be eligible to receive a grant under section 106. The CAPT A plan must include the following information:

a. (a) The program areas selected for improvement from the nine areas in section 106 (a) (1) through (9) of CAPTA;

b. (b) An outline of activities that the State intends to carry out with its Basic State Grant funds;

c. (c) A description of the services and training to be provided under the Basic State Grant as required by section 106 (b) (2) (C) of CAPTA;

d. (d) Include the assurances form (Attachment B) that has been completed and signed by the Chief Executive Officer of the State;

e. (e) Notification regarding substantive changes, if any, in State law that could affect eligibility, including an explanation from the State Attorney General as to why the change would, or would not, affect eligibility. Note: States do not have to notify the ACF of statutory changes or submit them for review if they are not substantive and would not affect eligibility; and

f. (f) Include a request for FY 2000 funds in the CFS-101 at Attachment D.

The Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands may submit consolidated grant applications in accordance with 45 CFR Part 97. These jurisdictions need not submit an application under this Program Instruction but may choose to have their allotments included in a consolidated grant and expend these funds under authority of another program that is available for consolidation.

3. Independent Living (States only)

a. (a) States are required to include in the CFSP a description of the independent living services to be provided in the upcoming fiscal year (FY 2000) (see 45 CFR 1357.16(a)(4)).

b. (b) States may elect to consolidate the ILP application information into the CFSP and apply for FY 2000 ILP funds. If the ILP application is not incorporated into the June 30, 1999 CFSP, then the State must submit the ILP application for FY 2000 by January 31,2000. States are encouraged to incorporate the ILP application with the CFSP in order to receive their ILP funding at the start of the fiscal year. The requirements for ILP funding as outlined in ACYF-PI-93-16, December 10, 1993 (Attachment F) must be included in the CFSP if a State chooses to consolidate.

c. (c) ILP Program Reports must be submitted no later than January 1, 2000 for FY 1999.

SUBMITTALS: The originals of the Final Report, the CFSP, the CFS-1 01, and the signed Assurances and Certifications included under Attachments A -C must be submitted by June 30, 1999, to the ACF Federal Regional Office.

States and Indian Tribes may submit the above documents as a paper copy or submit the documents on a 3.5 diskette to the Regional Office. Please specify what format the files are in (i.e., Word, WordPerfect, Excel, etc.). This is optional and States and Indian Tribes are not required to submit a diskette.

The Regional Office is to submit the original copy of the CFS-1 01 (signed and dated) to the following address:

Division of Formula, Entitlement and Block Grams Office of Administration

Administration for Children and Families 370 L'Enfant Promenade, S.W. Washington, D.C. 20447

Fiscal Reports

Title IV-B, subparts 1 and 2

States and Indian Tribes are required to submit fiscal reports at the end of each 12 months of the grant period. Fiscal reports covering the first 12 months of a budget period are interim reports and the report covering the entire grant period is the final report. The first report is due 30 days after the end of each 12 months budget period. The final report is due 90 days after the end of the fiscal year succeeding the fiscal year of the grant award (December 31). Funds under title IV-B must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded. Expenditures under title IV-B are to be reported by the State or Indian Tribe using a Standard Form 269, Financial Status Report, and submitted directly to the appropriate Regional HUB Director or Administrator.

CAPTA

States are required to submit fiscal reports at the end of each 12 months of the grant period. Fiscal reports covering the first 12 months of a budget period are interim reports and the report covering the entire grant period is the final report. The first report is due 30 days after the end of each 12 months budget period. The final report is due 90 days after the end of the fiscal year succeeding the fiscal year of the grant award (December 31). Funds under CAPTA must be expended within five years from the date of the award. Expenditures under CAPTA are to be reported by the State using a Standard Form 269, Financial Status Report, and submitted directly to the appropriate Regional HUB Director or Administrator.

ILP

Expenditures under the ILP are to be reported by States on a Standard Form 269 (SF-269), Financial Status Report. To minimize the burden, SF-269s are required on a semi-annual basis, except for the first SF-269 of the two-year expenditure period which will be due at twelve months. Reports will be due 30 days after each reporting period. The final report will be due 90 days after the end of the grant year. The first report covering the period October 1 through September 30 of the first year will be due 30 days after the end of the expenditure period, or October 31. The second report covering the period October 1 through March 31 will be due 30 days after the end of the expenditure period, or April 30. The final report covering the period April 1 through September 30 of the second year will be due 90 days after the end of the expenditure period, or December 31. The Standard Form 269 should be submitted directly to the appropriate Regional HUB Director or Administrator. (For additional information, see ACYF-PI-93-16.)

PAPERWORK REDUCTION ACT: Under the Paperwork Reduction Act of 1995 (Public Law 104–13), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Public reporting burden for the APSR and the CFS-101 is estimated to average 125 hours per response. The public reporting burden for the CFSP is estimated to average 300 hours.

APPENDIX E

2000 Annual Progress and Services Report Administration for Children and Families Program Instructions

ACYF-CB-PI-00-03 http://www.acf.dhhs.gov/programs/cb/laws/pi/piOOO3/piOOO3.htm

Laws/Policies

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration for Children, Youth and Families	
	1.Log No. Log No.: ACYF-CB-PI-00-03	2.Issuance Date: April 18, 2000
	4.Key Word: Title IV-B Child and Family Services State Plan; CAPTA State Plan; ILP; Annual Progress and Services Report	

PROGRAM INSTRUCTION

TO: State Agencies, Indian Tribes, Indian Tribal Organizations, Territories and Insular Areas Administering or Supervising the Administration of Title IV-B, subparts 1 and 2, or subpart 2 only, of the Social Security Act, Title IV-E of the Social Security Act; and State Office or Organization Designated by the Governor to Apply for Child Abuse and Neglect State Grant Funds.

SUBJECT: June 30, 2000 submission of the Annual Progress and Services Report required for title IV-B of the Social Security Act (the Act) and the CFS-101, Annual Budget Request and Annual Summary of Child and Family Services.

LEGAL AND RELATED REFERENCES: Title IV-B, subparts 1 and 2, and Title IV-E, Section 477 of the Social Security Act; Section 106 of the Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5101 et seq.); the Indian Child Welfare Act of 1978 (Public Law 95-608); the Indian Self-Determination and Education Assistance Act (Public Law 93-638); the Social Security Act Amendments of 1994 (Public Law 103–432); Adoption and Safe Families Act of 1997 (Public Law 105-89); 25 CFR Ch.1, Part 23 Subparts A and B -Indian Child Welfare Act; 45 CFR Part 1357; ACYF-PI-CB-95-23, October 11, 1995, Multiethnic Placement Act (Diligent recruitment only); ACYF-PI-CB-98-03, March 5, 1998 and ACYF-CB-PI-99-07 Fiscal Year 2000–2004, Child and Family Services Plan).

PURPOSE: In order to receive title IV-B and the Child Abuse Prevention and Treatment Act (CAPT A) funds for fiscal year 2001, States and Indian Tribes are required to submit the Annual Progress and Services Report (APSR) by June 30, 2000. This Program Instruction (PI) summarizes the actions required under title IV-B, subparts 1 and 2, CAPTA, and Federal regulations at 45 CFR Part 1357 in order for

States and Indian Tribes to receive their allotments for fiscal year (FY) 2001 (subject to the availability of appropriations).

BACKGROUND: The Federal regulation at 45 CFR Part 1357 applies to States and Indian Tribes receiving funds under title IV-B, subparts 1 and/or 2. These regulations require States and Indian Tribes to submit a five-year plan and to update that plan each of the remaining years by submitting the Annual Progress and Services Report (APSR). The APSR must contain information on the progress made on each goal and objective established in the Child and Family Services Plan (CFSP), changes made to the goals and objectives, and descriptions of the child welfare services, including the Independent Living program (ILP) and the programs under the Child Abuse Prevention and Treatment Act (CAPTA). States and Indian Tribes submitted new five-year plans June 30, 1999. The first update to that plan is due by June 30, 2000. This PI references the items in the Federal regulation that must be included in the APSR, including information on CAPT A and ILP. Additionally, this PI contains those requirements that have not yet been codified in Federal regulation, but are required by statute.

The CFS-101 is also to be submitted with the APSR. The CFS-101 has two parts. Part I is the budget request form that States and Indian Tribes must submit to request their title IV-B and/or CAPTA funds. Part II is the Annual Summary of Child and Family Services form for States and Indian Tribes to include the estimated amount of funds to be spent in each program area by source, the estimated number of individuals or families to be served, and the geographic service area.

Child Abuse Prevention and Treatment Act State Plan (States only)

Section 1 06(b)(1)(A) of CAPTA requires the submission of a CAPTA State program plan every five years. In order to help States plan comprehensively for the full array of child welfare services, from prevention and protection through permanency, the CFSP and the CAPTA plans were consolidated beginning with FY 2000 (see ACYF-CB-PI-99-07). Therefore, States are required to provide an update on the progress in achieving stated goals and service delivery under CAPTA in the APSR.

Please note that compliance with the eligibility requirements for a CAPT A State plan is a prerequisite for eligibility for funds under the Children's Justice Act State Grant Program authorized by Section 107(a) of CAPTA.

Although consolidation of the CAPTA application into the title IV-B planning process is required, pooled funding among the programs is not allowed, since separate funding streams and accountability are still required by statute. Eligibility and funding for the individual programs are kept separate and funding will not be delayed for one program due to potential eligibility issues in the other program.

Independent Living Program (ILP) (States and Puerto Rico)

In addition to meeting the requirements of title IV-B, subparts 1 and 2, States must include in their APSR information on the ILP under title IV-E of the Social Security Act (the Act) (see section 1357.15(a)(2)(I)). Recently the ILP was revised and amended by the Foster Care Independence Act of 1999

(P.L. 106–169). Therefore, the Children's Bureau is currently in the process of developing guidance to States on how to apply for FY 2000 only Chafee Foster Care Independence Program (CFCIP) funds. That guidance will provide information on submitting an abbreviated application in order to receive FY 2000 funds. Additional information will then later be provided on how to apply for FY 2001 and how to consolidate the five-year CFCIP plan with the CFSP. States are still required, however, to provide information in this year's APSR on how the ILP was coordinated with other child welfare services during FY 2000.

The CFS-101, Part I, Annual Budget Request form that is included as Attachment 0 currently includes space for requesting ILP funds, item #9. Please leave this space blank when submitting your FY 2001 budget request. Information for requesting the CFCIP funds will be included in the forthcoming CFCIP Program Instruction. States that have already applied for FY 2000 ILP funds must refer to the new PI for additional instructions.

Indian Child Welfare Act

In 1978, the Indian Child Welfare Act (ICWA) was passed. Indian Tribes were granted extensive jurisdiction in child welfare cases involving Indian children, recognizing "that there is no resource that is more vital to the continued existence and integrity of Indian Tribes than their children." ICWA "established minimum standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture." States are required to comply with this law in their child welfare practices. Many States have policies and procedures that address the specific elements laid out in the legislation. However, there were no Federal requirements for State reporting on ICWA compliance in either the legislation or subsequent regulations.

In October 1994, P.L. 103–432 was passed, which amended the Social Security Act. This statute amended section 422(b) by adding paragraph (11) that requires States, in consultation with Tribes and Tribal organizations, to describe the specific measures taken by the State to comply with ICWA. (Tribal organizations are defined in Section 4 of P.L. 93–638, the Indian Self-Determination and Education Assistance Act). Additionally, States are to provide an update to the goals and activities that have been undertaken, and will be completed, to improve, or maintain, compliance with ICWA.

The major ICWA requirements are listed under Attachment A to provide a clear understanding of what the law requires.

Consultation with Tribes:

A central element of the legislation is that the States' actions must be developed "after consultation with Tribal organizations." Tribes and Tribal organizations determine who speaks for them. The nature of the State/Tribal relationship should be reflected in appropriate persons of authority (high-level leaders, officials or managers) from both the State and Tribe participating in consultations/meetings. A face-to-face contact with Tribes and Tribal organizations, providing an opportunity for everyone to speak, is seen as an optimal format. Existing forums for State/Tribal discussion may be used to meet this requirement. Flexibility must be allowed to meet individual situations.

In those States where there are no Federally recognized Tribes, other resources such as urban Indian organizations and national Indian organizations should be consulted.

Tribes and States have suggested several activities that would be helpful in achieving State compliance with ICWA. Optional areas that States may choose to address in their CFSP include: training programs about ICWA for State employees; development of State caseworker compliance expectations or measures; and State partnership agreements with Tribes and Tribal organizations, for example, Tribal-State agreements on training.

Other suggested activities include: developing culturally appropriate standards for American Indian foster home licensing, recruiting of Indian foster homes, promotion of relative placement of Indian children, and recognition and use of tribal licensed foster homes for placement of Indian children.

FY 2000 Funding

Congress has approved a total of $291,986,000 for the Child Welfare Services State Grant Program, $276,050,000 for the Promoting Safe and Stable Families Program for States, $2,950,000 for the Promoting Safe and Stable Families Program for eligible Indian Tribes and, $21,026,000 for CAPTA. Allotments for Tribes for titles IV-B, subparts 1 and 2 are included. The amount of each grantee's final allotment for FY 2000 is listed in Attachment B. The listing of each State's allocation for funding under the new John H. Chafee Foster Care Independence Program has been included in Information Memorandum ACYF-CB-IM-00-03, dated March 16,2000.

INSTRUCTIONS:

A. This section describes the requirements States and eligible Indian Tribes must meet in order to receive their title IV-B and CAPTA (States only) allotments of funds for FY 2001. The completed APSR must meet the requirements of 45 CFR 1357.16, 45 CFR 1357. 32, 45 CFR 1357.40, 45 CFR 1357.50 and title IV-B, subparts 1 and/or 2 of the Social Security Act (the Act).

1. Requirements under 1357.16 Title IV-B, subparts 1 and/or 2.):

   Each State and each Indian Tribe must conduct an interim review of the progress made in the previous fiscal year toward accomplishing the goals and objectives in the CFSP, based on updated information. In developing the APSR, States and the Indian Tribes must involve the agencies, organizations, and individuals who are a part of the on-going CFSP-related consultation and coordination process. The APSR must include the following:

   a. A report on the specific accomplishments and progress made in the past fiscal year toward meeting each goal and objective, including improved outcomes for children and families, and a more comprehensive, coordinated, effective child and family services continuum;

   b. Any revisions in the statement of goals and objectives, or to the training plan, if necessary, to reflect changed circumstances;

c. For Indian Tribes, a description of the child welfare and/or family preservation, family support services, time-limited family reunification services, and adoption promotion and support services to be provided in the upcoming fiscal year, highlighting any changes in services or program design and including the information required in 45 CFR 1357.15(n);

d. For States, a description of the child protective, child welfare, family preservation, family support, time-limited family reunification services, adoption promotion and support services, and independent living services to be provided in the upcoming fiscal year highlighting any additions or changes in services or program design and including the information required in 45 CFR 1357.15(n);

e. Information on activities in the areas of training, technical assistance, research, evaluation, or management information systems that will be carried out in the upcoming fiscal year in support of the goals and objectives in the plan;

f. For States only, the information required to meet the maintenance of effort (non-supplantation) requirement in section 432(a)(7) of the Act and Federal regulation at 45 CFR 1357.32(f) (maintenance of effort);

g. Significant portion of funds used for title IV-B, subpart 2, Promoting Safe and Stable Families (45 CFR 1357.15(s)) (States only). For the purpose of applying for FY 2001 funds, States must indicate the specific percentages of title IV-B, subpart 2 funds that the State will expend on actual service delivery of family preservation, community-based family support, time-limited family reunification and adoption promotion and support services, as well as planning and service coordination, with a rationale for the decision. The State must have an especially strong rationale if the percentage provided is below 20% for anyone of the four service categories. The amount allocated to each of the service categories should only include funds for service delivery. States should report separately the amount to be allocated to planning and service coordination. (See ACYF-PI-CB-98-03, March 5, 1998).

h. Any other information the State or the Indian Tribe wishes to include;

i. Include a request for FY 2001 funds in the CFS-101 at Attachment D.

2. Additional Required Information:

In addition to the information required in 45 CFR 1357.16, States and Indian Tribes (if applicable), must provide the following information in the APSR. This information results from changes in title IV-B resulting from the Adoption and Safe Families Act (ASFA), or amendments to the Act. The APSR must include:

a. A description of the States' and Indian Tribes' progress and accomplishments made with regard to the diligent recruitment of potential foster and adoptive families that reflects the ethnic and racial diversity of children in the state for whom foster and adoptive homes are needed. (See section 422(b)(9) of the Act);

b. A description of the States" and Indian Tribes' plans for the effective use of cross-jurisdictional

resources to facilitate timely adoptive or permanent placements for waiting children. (See section 422(b)(12) of the Act). This applies to States and Indian Tribes applying for title IV-B, Subpart 1, funds;

c. An update on the " ... specific measures taken by the State to comply with the Indian Child Welfare Act" [See section 422(b)(11) of the Act];

d. For States operating a child welfare demonstration project under section 1130 of the Act, a description of the accomplishments and progress in the demonstration project as they relate to the goals and objectives in the State's CFSP, where applicable. In particular, the State will discuss how title IV-B monies are used to maximize the use of flexible title IV-E dollars in the demonstration;

e. For those States receiving an adoption incentive payment, specify the services that have been, or will be, provided to children and families with the adoption incentive funds.

f. Please provide information on the specific measures taken to implement the transition rules that apply to section 475(5)(E) the Act, and the outcomes of the implementation. See ACYF-CB-PI-98-14, August 20, 1998 regarding "new" and "current" children in foster care;

g. An update on the capacity of the State child welfare agency and the State judicial system to implement and meet the requirement to file a petition to terminate the parental rights of the child's parents, if the exclusions do not apply, when a child has been in foster care for 15 of the most recent 22 months.

3. Child Abuse Prevention and Treatment Act (States only)

States with an existing CAPTA/CFS Plan, must include the following information regarding CAPTA in the APSR:

a. Accomplishments to date under the CAPTA portion of the consolidated CFSP;

b. An update on the program areas selected for improvement from the nine areas in section 106(a) (1) through (9) of CAPTA;

c. An update of activities that the State intends to carry out with its CAPT A State Grant funds and any changes in activities for FY 2001 funds;

d. States that indicated in the FY 2000 CFSP/final report that they did not meet the assurance requirements set forth under sections 106(b)(2)(A -B) and 106(b)(2)(D) of CAPTA should indicate if they are now in complete compliance with those assurances. If the State is not in complete compliance, describe what was done to come into compliance, why was compliance not achieved, and what actions are being taken to try to meet the outstanding requirements?

e. A description of the services and training provided under the CAPTA State Grant as required by section 106(b)(2)(C) of CAPT A;

f. Notification regarding substantive changes, if any, in State law that could affect eligibility, including an explanation from the State Attorney General as to why the change would, or would not, affect eligibility Note: States do not have to notify the ACF of statutory changes or submit them for review if they are not substantive and would not affect eligibility;

g. States with established citizen review panels, must submit a copy of the annual report(s) from the citizen review panels. Section 106(c) of CAPTA requires that the citizen review panels develop annual reports and make them available to the public. The report should include, at a minimum, a summary of the panel's activities, the recommendations of the panel based upon its activities and findings, and include information on the progress States are making in implementing the recommendations of the panels.

h. Include a request for FY 2001 funds in the CFS-101 at Attachment D.

B. This section describes the requirements for the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands in order to receive allotments for FY 2001.

1. Consolidated grant applications may be submitted in accordance with 45 CFR Part 97. These jurisdictions need not submit an application under this PI but may choose to have their title IV-B, subparts 1 and/or 2, allotments included in a consolidated grant and expend these funds under authority of another program that is available for consolidation. If the Insular Areas choose to consolidate their application for title IV-B, subparts 1 and/or 2, they must notify their ACF Regional Office in writing of their intent by June 30, 2000.

2. Insular Areas that choose to submit an APSR may do so and must submit it to their ACF Regional Office by June 30, 2000.

C. FY 2000 Funding

1. If States, Territories, and Indian Tribes requested less than the amount for which they were eligible for under Title IV-B, Subparts 1 or 2, or CAPTA for FY 2000, then a revised budget: form (CFS-101, Part I) must be submitted if they wish to receive the full share of FY 2000 funds. This form should be submitted as soon as possible and no later than June 30, 2000.

SUBMITTALS:

States and Indian Tribes are to submit an original of the APSR and two originals of the CFS-101 by June 30,2000, to the ACF Regional Office. States and Indian Tribes are to use the estimated figures for FY 2001 allotments found in Attachment C.

States and Indian Tribes may submit the documents as a paper copy or submit the documents on a 3.5 diskette to the Regional Office. Please specify what format the files are in (i.e., Word, WordPerfect, Excel, etc.). This is optional and States and Indian Tribes are not required to submit a diskette. If a State or

Indian Tribe chooses to submit the APSR electronically, a hard copy of the original signed CFS-101 is still required

The Regional Office is to submit the original copy of the CFS-101 (signed and dated) to the following address:

Administration on Children, Youth and Families Office of Management Services 330 C Street, S.W., Room 1427 Washington, D.C. 20447

Fiscal Reports (SF-269)

Expenditures under title IV-B and CAPTA are to be reported by the State or Indian Tribe using a Standard Form 269, Financial Status Report. Submit the original to your ACF Regional Office and a copy to the address below:

Administration on Children, Youth and Families Office of Management Services, 330 C Street, S.W., Room 1427 Washington, D.C. 20447

Title IV-B, subparts 1 and 2

States and Indian Tribes are required to submit fiscal reports for each subpart of title IV-B at the end of each 12 months of the two-year expenditure period. Fiscal reports covering each 12 month budget period are interim reports and the report covering the entire grant period is the final report. Interim reports are due 90 days after the end of each 12-month budget period. The final report is due 90 days after the end of the fiscal year succeeding the fiscal year of the grant award (December 31). The required 25% State match must be reported on the final report. Funds under title IV-B must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

CAPTA

States are required to submit fiscal reports at the end of each fiscal year of the five-year expenditure period. Fiscal reports covering each 12-month budget period are interim reports and the report covering the entire grant period is the final report. Interim reports are due 90 days after the end of each 12-month budget period. The final report is due 90 days after the end of the five-year period (December 31). Funds under CAPT A must be expended within five years.

A negative grant award will recoup unobligated and/or unliquidated funds reported on the final financial status report (SF-269).

PAPERWORK REDUCTION ACT:

Under the Paperwork Reduction Act of 1995 (Public Law 104–13), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Public reporting burden for the APSR and the CFS-101 is estimated to average 125 hours per response.

Attachments

Attachment A: Major ICWA Requirements

Major ICW A Requirements:

1. Identification of Indian children by the State child welfare services agency (P L. 95-608 Sec. 4(4)).
2. Indian parents and Tribes have the right to notice of, and to intervene, in State proceedings involving Indian children (Sec. 102(a), Sec. 103(a)).
3. Special preference for placement of Indian children with: (1) a member of the child's extended family, (2) other members of the Indian child's Tribe, or (3) other Indian families and as specified by Sec. 105(b).
4. Active efforts to prevent the breakup of the Indian family (Sec. 102(d)), including use of Tribal community services and culturally appropriate programs.
5. Use of Tribal courts in child welfare matters. Tribal rights to intervene in State proceedings, or transfer the proceedings to the jurisdiction of the Tribe (Sec. 101(a), (b) & (c).

APPENDIX F

Examples of States that Reported on All Required Administration for Children and Families Specific Measures in Their 2000 Annual Progress and Services Reports

For purposes of this appendix, three states have been chosen as examples of plans and progress reports that included all required specific measures as outlined in ACF guidelines: Alaska, Mississippi, and Washington. These states indicated tribal consultation was pursued, and specific measures for the identification of an Indian child, notification to the relevant tribe, Indian caregiver preference, and relevant child protection standards were developed. These states are important to mention as having good examples of specific and other measures in their CFSPs/APSRs so that their plans/progress reports may be used as a reference tool by other states developing the same documents.

The state of Alaska's CFSP reports an agreement between the state and various tribal groups to periodically consult. It also mentions the creation of an ICWA help desk for state and tribal workers with questions involving ICWA and the existence of an ICWA subcommittee that is a part of a Court Improvement Project. Finally, the state also sponsors an ICWA newsletter.

The state of Mississippi's CFSP reports that the state and the Mississippi Choctaw tribe conduct an annual partnership conference to discuss ICWA and other child welfare issues. Additionally, the plan states cross-training occurs between the state and tribe to improve the understanding of child welfare policies, procedures, and practices. Finally, and most importantly, the plan reports that the Mississippi Choctaw tribe is active in training state workers on Indian child welfare issues.

The state of Washington's CFSP reports that a regional administrator meets quarterly with tribes and urban Indian organizations to promote ongoing information sharing and joint planning. Additionally, the plan states that "regions shall develop and implement an ICW training plan with Tribal and Urban Indian Organization Indian representatives to educate courts, attorneys, law enforcement, supervisors, managers, and administrators." Finally, the state of Washington, in consultation with tribal representatives and urban Indian organization representatives, mentioned plans to establish an Indian child welfare case review process and a new case file format that includes an identification process, legal provisions, and placement preferences. The Governor's Office of Indian Affairs provides training on "Tribal-State Relations" to DCFS supervisors and managers.

APPENDIX G

Commonly Used Acronyms

Acronyms

ACF	Administration for Children and Families
APSR	Annual Progress and Services Report
BIA	Bureau of Indian Affairs
CAPTA	Child Abuse Prevention and Treatment Act
CFSP	Child and Family Services Plan
CFSR	Child and Family Services Review
ICWA	Indian Child Welfare Act
PSSF	Promoting Safe and Stable Families
USDHHS	United States Department of Health and Human Services

Footnotes

[1] ICWA defines an "Indian" child as any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe AND the biological child of a member of an Indian tribe (25 U.S.C. § 1903 [4]).

[2] It should be noted that 2 of the 10 regional administrators that were contacted stated that the questionnaire would be more appropriately answered by others and subsequently sent the survey to administrators in charge of individual states within their region for completion. For analysis purposes, responses from these multiple administrators in a given region were aggregated together into one response from that region. A total of six surveys were completed in this manner (four from one region and two from the other). Additionally, one of the regions that had various administrators fill out the questionnaire did not complete the last three questions on the survey because they felt that they did not have enough knowledge to do so.

[3] Although the research team grouped these seven answers under the category of the Children's Bureau, three of the administrators stated that the program instructions were developed by the Children's Bureau, one administrator stated they were developed by the national office (ACF), and three mentioned they were developed by the central office (ACF). It should be noted that the Children's Bureau is a department located within the Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth, and Families.

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